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DEMOCRACY'S DUTY:

**THE HISTORY OF POLITICAL DEBATES ON
COMPULSORY VOTING**

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Abstract

One of the most controversial solutions proposed to counter voter apathy is compulsory voting. Early variations of the idea and practice have existed since ancient times, but a more systematic consideration began in the second half of the nineteenth century. A long series of legislative proposals in the French Third Republic (1870-1940) and a constitutional reform in Belgium (1893) opened the path for thought-provoking parliamentary debates. In the 1920s, other countries followed suit and, in particular, Greece, where the different historical context gave the discussions a new perspective. In general, the discourse on the legal obligation to vote has been transformed with new rationales and adapted to pragmatic concerns up to the present day.

This thesis focuses on the multiple rhetorical justifications used for or against compulsory voting since the advent of modern representative democracy. Attention is given to the content of arguments, the intentions of speakers (including their political objectives and moral assumptions), the interaction with other institutions and the overall effects of the discourse on political life. Thus, my methodology brings a particular style of comparative history of political concepts to the study of electoral institutions.

As a result, the normative question of electoral obligation becomes intertwined with a parliamentary conflict over the nature of voting, which has direct political consequences. Compulsory voting has most often been supported by conservative and republican political groups in order, it seems, to create electoral advantages for themselves. In this, they have emphasised ideas such as patriotism, political stability and representativeness, as well as the educative role of democracy and the importance of responsible citizenship. The contemporary debate takes up some of these ideas and adapts them to the new conflict between liberty and equality that lies at the core of the democratic paradox.

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Chapter 1: Introduction

An old-new controversy: Why compulsory voting?

“Voting is a civic duty”. As old-fashioned as it may sound, this phrase is repeated often, especially at election times. While it is only supposed to call to mind the symbolic responsibility we carry as voters and citizens, it also fills some of us with guilt or shame for having failed, whether deliberately or not, to go to the polling station on election day. Yet, little is known about the origins and the grounds that justify this ethical imperative to vote. What’s more, voting as a duty is often seen as mutually exclusive from voting as a right. Therefore, it is high time that we asked: Why do we *have to* vote, if at all? Is it possible to reconcile voting as a right with voting as a duty without lapsing into a contradiction?

Most advanced democracies recognise the right to vote while, at the same time, a social norm urges citizens to exercise this right; in some states, this obligation has become an explicit law. But the legal obligation is not simply the consequence of having accepted voting as a moral duty. Most countries accept the latter, without imposing a punishment on those who abstain. Despite the logical connection between voting as a duty and mandatory electoral participation, the two discourses are not necessarily connected. The debate on compulsory voting has had its own political trajectory and conceptual history. A legal requirement to vote raises a number of reservations regarding, for example, the use of power by the state and the individual liberties of citizens. Consequently, under which circumstances does it make sense for a state to move from merely recognising voting as an abstract civic duty to punishing people for not voting?

Indeed, the idea of compulsory voting has become attractive to legislators in several countries nowadays. In fact, it is the most robust, yet controversial tool that has been suggested in order to overcome the recent growth in political apathy, including low

party memberships and decreased voter participation in elections. During the past ten years, turnouts in the British and French general elections, for example, have been the lowest recorded since World War II. This is particularly worrying for party leaders and politicians, whose interest in turnout rates has been linked, among other things, to their effort to control election results.

In general, there are various interpretations as to the causes and consequences of abstention. Many political scholars argue that abstention itself is not a problem, but the symptom of a deeper and more systemic crisis of democracy. Electoral practice is seen as a corrupt expression or worn-out form of democratic governance. Although this critique of the decadence of the postmodern political condition is well-founded, others see voter alienation as a cause, rather than consequence, of democracy's drawbacks. Indeed, the absence of citizens from the polls has been considered the source of the crisis in parliamentary and state institutions, for it causes a legitimacy deficit for governments, a lack of feedback from the grassroots to the parties and doubts in the voters themselves about the quality of their political representation. Because of this multiple damage, the curbing of voter abstention is currently viewed by many as the key to fundamental political change.

It is in this context that the idea of compulsory voting has grown so strong. Supporters believe that such a measure will in practice restore the primacy of universal participation and political equality over individual liberty. In addition, it would revitalise interest in political discourse and encourage the emergence of more genuine alternatives to choose from. From this point of view, voting ceases to be understood as a ceremonial, formal act with no substantial effect, but is recast in an old-new light as the source of constitutional and performative democratic power.

Concepts and interpretations

The relation of obligatory voting to democracy is perhaps the most controversial and contested aspect of the debate at hand. Forced voting violates free choice, but promotes equality and participation. In this sense, is it democratic or authoritarian to

demand that citizens vote? Attempting a normative one-off response to this question would be, at the very least, naïve and a sign of ignorance for a historian of political concepts. First of all, ‘democracy’ is a polysemantic concept that cannot be reduced to a set of electoral institutions. Theorists of social or participatory democracy would be the first to argue in this direction. Hence, increasing the number of effective voters is democratic, if at all, only to the extent that democracy is identified with electoral democracy.

Secondly, the nature of obligatory voting is understood differently according to the political standpoint adopted with regard to what are the defining traits of democracy. To put it in rough terms, one who views universal and equal participation as the core principle of democracy may well view compulsory voting as the best means to achieve it and therefore as a pro-democratic reform. On the other hand, one who views free choice as fundamental may well view obligatory voting as undemocratic.

But then again, there is a third element that determines the degree to which compulsory voting is viewed as democratic: the context. The actual political circumstances and institutional settings that frame the practice of voting play an important role on the associations one perceives. For example, there is a stark difference between brutal police enforcement of attendance at polls where only one party is running and a mild application of small fines in a multi-party democracy. In other words, neither democracy nor compulsory voting has a static meaning and application. How they are related is clearly a matter of political and conceptual contingency.

At this point, it is important to add nuances also to the phenomenon of electoral abstention and its interpretation. For example, there is a semantic and pragmatic difference between involuntary and voluntary abstention, that is, whether it is caused by neglect or through deliberate intention. The second type can be subdivided into a conscientious rejection of all candidates or a rejection of the electoral process as a whole, or on the other hand, a strategic group boycott of a particular election (abstentionism). Then again, the intentions of abstainers do not always coincide with how their messages are received. For example, in 1848 abstention was described by

Frenchmen as a failure of individual voters to implement universal suffrage, while in the early 1870s it was seen as betrayal of one's loyalty to a political party.¹ The value and effect of enforcing participation vary according to the aims of the abstainers and how their action is read politically by the interested parties.

Another conceptual distinction must be made with regard to the terms 'compulsory', 'mandatory' and 'obligatory' voting. The first implies that someone is forced to do something; it is commonly used in connection with state-imposed activities, such as education, military service, health care etc. 'Mandatory' draws on the concept of mandate and refers to matters required by law, policy or regulation. 'Obligatory' has usually weaker connotations than the other two and is used generally for matters of moral or social obligation, associated with custom rather than law. The latter is also a calque of the French term '*vote obligatoire*', whereas English scholarship has predominantly used 'compulsory voting'.

This variation in terminology betrays a difference in political cultures, with Francophone users adopting a softer tone and approach to the idea. In contrast, Anglophone speakers' use of 'compulsory' portrays the institution as something strict or paternalistic. To give a different impression, Canadian and Australian scholars of late have switched to a systematic use of 'mandatory voting'. Hence, the use of different terms contains a bias, whether deliberate or not, towards the value of the practice. Although I am cognizant of the different connotations between the three terms, I will use them interchangeably throughout the thesis.

Whatever term we use, the fact is that today we do still lack sufficient knowledge about the origins and different qualities of this institution. Why did some countries introduce it and others did not? Why did some abolish it and others preserved it Does mandatory voting exist (mainly) in isolation or is it linked to other institutions and, if so, which ones? What types of punishment have existed for abstention and how have they been justified? What are the preconditions for successfully implementing compulsory voting? What intended and unintended consequences arise from this

¹On the other hand, in the second case, French conservatives criticised their own members for participating in the election, which meant that they were accepting universal suffrage *de facto*.

reform? Is it true, for example, that such issues come into play as party gains, problems of legal definition as well as practical difficulties and technical implications? Despite the wide range of differences, all of these variables come together in what I consider the *politics* of compulsory voting.

Comparative conceptual history of electoral reforms

The question of imposing or abolishing the obligation to vote has come to prominence during the last ten years, both in political and scientific circles. Discussions have looked at the political consequences, the legal implications and other normative aspects. Scholars have treated the issue from the perspective of rational choice, game theory, electoral behaviour and voter attitudes. As a result, today there is an abundance of information available on the topic, featuring very interesting speculations. Apart from a great many journal articles, the first monograph on the topic appeared two years ago.² It deals with the comparative analysis of the institution and, to a lesser degree, the normative discourse on compulsory voting. However, as most normative analyses, it does not really capture the context-bound conceptual relativity and variation of the subject. In general, no study so far has identified the interconnectedness between the moral and the political aspects, the conflicting conceptions and objectives of the debate, or the historical *topoi* and the process of their politicisation.

In fact, this is the first comprehensive historical study on compulsory voting. There seem to have been almost no previous studies of the history of the idea and practice. The only relevant literature that I have found is an unpublished Master's thesis from 2004, written in French, by Mathieu Hauchecorne, "*Le suffrage en questions: Une étude des débats autour du vote obligatoire (Australie, Belgique, États-Unis, France)*" (Memoire DEA, IEP Paris). This is a very innovative and carefully researched piece of work, although its scope is limited to mostly secondary material

² S. Birch (2009), *Full Participation: A Comparative Study of Compulsory Voting*. New York: United Nations University Press

and contains only about a dozen references per country. Nevertheless, it must be given credit for offering the first historical overview of the subject and for focusing on a more conceptual problematic.

The primary aim of my study is to combine the history of electoral reforms with conceptual history and continental political theory. A few previous studies have served as models: Hubertus Buchstein's *Öffentliche und Geheime Stimmabgabe* (Baden-Baden: Nomos 2000), Pierre Rosanvallon's *Le sacre du citoyen* (Paris: Gallimard 1992) and Alan Kahan's *Liberalism in Nineteenth-Century Europe: The political culture of limited suffrage* (New York: Palgrave 2003). All treat suffrage reforms — secret and universal suffrage — from the point of view of the arguments and the intellectual conflicts that framed them. Buchstein and Kahan also add a comparative element and analyse the discussions in three different countries. My study is in many ways similar to this type of comparative analyses, though mine covers a different electoral reform over a longer period of time, and therefore tackles other objectives and raises a different set of questions.

To be more specific, I apply to the subject matter a methodological style that may be described as a comparative, conceptual history of politics. In particular, I adopt the main principles of historical political research developed by Reinhart Koselleck (*Begriffsgeschichte*),³ Quentin Skinner (the “Cambridge School” of the history of political thought),⁴ Pierre Rosanvallon (*Histoire Conceptuelle du Politique*)⁵ and Kari Palonen (Conceptual History).⁶ In particular, politics is approached as communicative action, through the analysis of language. Attention is paid to the perspectives and motives of speakers and authors, as the ideas expressed are fluid and concepts are used as tools for specific ends. A particular discourse is analysed in its *longue durée*.

³ R.Koselleck (1972), ‘Einleitung’ in O.Bruner, W.Conze, R.Koselleck (eds.), *Geschichtliche Grundbegriffe: historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Stuttgart, Klett-Cotta, v. I, pp. xiii-xxvii

⁴ Q.Skinner (2002), *Visions of Politics I: Regarding Method*, Cambridge: Cambridge University Press

⁵ P.Rosanvallon (2002), *Pour une histoire conceptuelle du politique*, Paris : Seuil

⁶ Palonen (2006), “Two Concepts of Politics: Conceptual History and Present Controversies”, *Distinktion* vol.12, pp.11-25

The principal materials used are primary sources, in particular, parliamentary debates and legislative proposals. Secondary materials include lesser known political literature from the late nineteenth century and on, e.g. pamphlets and excerpts from journals, books and articles. The use of parliamentary debates is a very central aspect not only of my methodological, but also epistemological approach. Although historians have always used such texts, conceptual readings are not always common for them. Scholars of political thought, on the other hand, are mostly interested in reading philosophical treatises of past authors, in particular, of other academics. Yet, I believe that, in order to understand political thought, it is useful to turn our attention to the thinking done by the political actors themselves, as expressed in their oral or written acts.⁷

The use of parliamentary debates as the material of political thought is not simply an experimental application of political-historical sources to the study of conceptual history. It is founded on a distinct epistemological view, whereby the search for empirical 'truth' becomes possible by re-conceptualising 'objectivity' as the struggle between opposing standpoints.⁸ Since parliament is the quintessential site where political views compete against each other on a level playing field, it becomes the birthplace of political wisdom, by way of what has been called the parliamentary theory of knowledge⁹. As a result, parliamentary material, whether plenary or committee debates, law proposals or reports, becomes the first place to look for political concepts and their rhetorical re-descriptions.

The central hypothesis of my research is that the dispute on obligatory voting is rooted in a politicised, i.e. ideological, conceptual disagreement. Therefore, I place special emphasis on the rhetoric of the agents involved in the debates, the arguments developed and, especially, the ideas expressed in them. For example, the meanings of

⁷ P.Ihalainen, K.Palonen (2009), "Parliamentary sources in the comparative study of conceptual history: methodological aspects and illustrations of a research proposal", *Parliaments, Estates & Representation*, vol.29, pp.17-34

⁸ K.Palonen (2009), "'Objectivity' as fair play: Max Weber's parliamentary re-description of a normative concept", *Redescriptions: Yearbook of Political Thought, Conceptual History and Feminist Theory*, vol.12, pp.71-95

⁹ K.Palonen (2004), "Max Weber, Parliamentarism and the Rhetorical Culture of Politics", *Max Weber Studies* Vol.4, pp. 277-280

voting, representation, participation, right, duty, liberty and citizenship are redefined and renegotiated within each and every debate over compulsory voting. My attention goes particularly to the perspectivistic use of concepts, which generates normative axioms and political controversies. As a result, philosophical questions, such as whether or not obligatory voting violates 'liberty', are resolved through a contextual reading, rather than a tautological analysis of a-historical ideas. In this way, the history of voting reform becomes a history of political concepts.

In addition, I look for the political interests and tactical calculations around the electoral reform and the latter's impact on the balance of power between rival political forces. This allows me to identify the political dynamics of speech-acts, that is, to link the intentions of speakers with the content of their arguments. The historical moment, with its socio-political constellations and cultural dispositions, thus becomes a crucial element in explaining why the topic comes to prominence and disappears in the nineteenth and twentieth centuries, only to come back again in the mid-1990s

Covering such a long time-span of discussions is necessary in order to track the continuities and discontinuities of these conceptualisations and politicisations, which appear most clearly over the long term. Through the comparison between past and present realities, I am able to distinguish between old and new conceptions, as well as between recurring and isolated lines of argument. In addition, my thesis produces historical evidence that answers such questions as: When and where was obligatory voting first devised? Did it constitute a progressive or reactionary step at the time? Who was in favour and who opposed? Was the reform successful? Besides answering these historical questions, this study contributes to the ongoing debate over compulsory voting not only by presenting its historical background, but also by analysing the contemporary material from the points of view of shifting argumentation, changing political motives and diverse conceptualisations.

As mentioned, my thesis is also a comparative analysis of a number of case studies. This does not only help to avoid academic parochialism, but it also makes possible to pin down the similarities and differences across national contexts. My main focus is on France, Belgium and Greece, each of them representing a critical moment in the

discourse. The main criterion for choosing these case studies was the availability and depth of material. In this respect, the extensive elaboration of compulsory voting in late nineteenth-century France and the historical debate in Belgium made them very easy picks.

However, the 1920s was perhaps the most important decade, as compulsory voting was then introduced in several countries. Thus, I needed a representative case-study from that time. Australia, Netherlands, Luxembourg and Austria were potential candidates. But the first was too distant geographically, culturally and politically, while the debates in others were either too closely linked to the Belgian debate (Netherlands, Luxembourg) or applied compulsory voting only on a cantonal or presidential level, not in legislative elections (Austria). In the end, Greece seemed the best choice, because its political and institutional culture is sufficiently close to the other chosen cases, yet offers a new perspective, different arguments and a very challenging partisan setting.

Chapters/Topoi

The origins of compulsory voting go back to the earliest ideas and practices of European democracy. In ancient Greece, the communitarian philosophy of political obligation was accompanied by a practice of fining negligent citizens. The reappearance of a similar custom in medieval cities was linked also to their small size, which made participation more direct and subject-centred. In reality, the duty ethic existed only among the noble classes, which formed the ideological basis of limited suffrage. Even after the French Revolution, the struggle for universal voting brought only a formal recognition of rights, which were obliterated negated in practice by a lack of mass participation (Chapter 2).

The breakthrough of compulsory voting happens in Europe's golden era of democratisation during the second half of the nineteenth century. Indeed, the first lengthy and most elaborate discussions took place in France during the first part of the Third Republic, from 1870 to 1910. In the meantime, the royalist and Proudhonian

strategies of civil disobedience triggered a conservative and, after 1880, a republican reaction that insisted on imposing sanctions on abstainers. Conservatives justified their claims in connection with their traditional theory of voting, i.e. as a duty for the privileged few. Republicans, on the other hand, saw it as a tool for bringing into being the ideal republican citizen, who was responsible, community-minded and educated. This was reflected in the type of punishment they suggested, which included sanctions of a moral and political character (Chapter 3).

In the early twentieth century, the idea was also linked to the need to restore the stability and credibility of electoral democracy. Challenges posed by anarchists, syndicalists and especially socialists created fears for the future of parliamentarism. The obligation to vote was seen as a matter of political and constitutional urgency, linked to the ideal of patriotism and the protection of community values. Theories of organicism and social solidarity formed the basis for such an understanding of citizenship and almost led to the adoption of compulsory voting in France by a right-wing government in 1922. In the meantime, around the 1920s, the practice had become very widespread internationally (Chapter 4).

Belgium was the first country to adopt it on a nationwide level. At the beginning, already in 1893, it was aimed at preventing forced abstention (i.e. through threats or intimidation by employers) and complementing the introduction of universal suffrage. The two reforms were bound together in an effort to ensure that public opinion would be 'truly' represented in the parliament. Voting was described as a mandate of the citizen, who thus had a commission to protect the public order and the integrity of the state for the sake of the non-voters. In this context, the republican liberalism of John Stuart Mill, endorsed by the Catholic government, was confronted by a more individualist reading from the Liberal opposition, which denounced the bill as oppressive and paternalistic (Chapter 5).

Compulsory voting acquired a whole new dimension in the case of early twentieth century Greece. Frequent election boycotts and an extreme polarisation between Venizelists/Liberals and Antivenizelists/Royalists led to the prohibition of abstention for reasons of public security. Although punishment was initially not enforced, during

the Cold War era, supporters of the outlawed Communist Party were pressured to take part in elections under the threat of extraordinarily heavy sanctions (Chapter 6).

A revolt against such practices, as well as their association with compulsory elections in the Soviet Union, explains why the institution started to lose ground after the 1970s. In Greece, the discourse centred on the importance of blank ballots as a way to guarantee freedom of choice. In Belgium, the Liberal and other parties, influenced by the abolishment of the compulsory voting clause in neighbouring Netherlands in 1970, started a campaign against compulsory voting that goes on to this day. A central element of the discussion has been the alleged causality between compulsory voting and protest votes accountable for the rise of the far-right *Vlaams Blok* (Chapter 7).

Yet, after the late 1990s, the opposite trend seems to have developed too: advocacy in favour of compulsory voting. The increased attention and support for the idea in Canada, Britain and elsewhere is part of a general concern about decreasing levels of civic engagement in political affairs. Legal sanctions would help restore the *actual* numerical and thus political equality of votes and thereby create a more legitimate result, the argument goes. Opponents of the reform claim, though, that not only would this conflict with freedom of political expression, but it would eliminate an important way of measuring citizen satisfaction, which is manifested by turnout fluctuations. The normative debate remains ongoing to date and is further complicated by political interests and biases (Chapter 8).

In conclusion, the discourse on obligatory voting is conditioned by the historical context, the available political concepts and the specific intentions of the actors involved in the debate. Not only the objective, but also the justifications for the idea change across national borders and temporal layers. In addition, the use of terms and arguments becomes subject to the ideological predispositions and conceptual points of reference. This explains why a normative analysis of the issue based on predetermined, static ideas does not offer enough explanation as to what compulsory voting is all about.

Chapter 2: The prehistory of compulsory voting

Ancient Greek ideas and practice

The European political tradition seems to hold a special place for the idea of civic obligation and the duty to attend public meetings. The origins of compulsory voting reach far back indeed, appearing in the archaic reforms of Solon [638-558 BC]. According to Plutarch:

*‘Amongst his other laws, one is very peculiar and surprising, which disfranchises all who stand neuter in a sedition; for it seems he would not have any one remain insensible and regardless of the public good, and, securing his private affairs, glory that he has no feeling of the distempers of his country; but at once join with the good party and those that have the right upon their side, assist and venture with them, rather than keep out of harm’s way and watch who would get the better’.*¹

In other words, Solon asked the Athenians to rise above their private interests and actively serve the public good, in an effort to introduce civil concord into an otherwise unequal society. In fact, as Plutarch explains, the *Solonian Laws* meant to put an end to the economic stalemate caused by extreme social inequality of predominantly oligarchic Athens.² But his urgent reforms aimed not only at regulating the social conflict by alleviating the plight of the poor, but by doing so also hoped to ensure a political reconciliation. Solon tried to moderate the ongoing polarisation (*stasis*) of the nobility and the common people by promoting a spirit of political solidarity, i.e. a sense of political duty shared by all. Thus, the obligation to

¹ «τῶν δ' ἄλλων αὐτοῦ νόμων ἴδιος μὲν μάλιστα καὶ παράδοξος ὁ κελεύων ἄτιμον εἶναι τὸν ἐν στάσει μηδετέρας μερίδος γενόμενον. Βούλεται δ', ὡς ἔοικε, μὴ ἀπαθῶς μηδ' ἀναισθητῶς ἔχειν πρὸς τὸ κοινόν, ἐν ἀσφαλεῖ θέμενον τὰ οἰκέϊα καὶ τῶ μὴ συναγεῖν μηδ' ἐσυννοσεῖν τῇ πατρίδι καλλωπιζόμενον, ἀλλ' αὐτόθεν τοῖς τὰ βελτίω καὶ δικαιότερα πράττουσι προσθέμενον, συγκινδυνεύειν καὶ βοηθεῖν, μᾶλλον ἢ περιμένειν ἀκινδύνως τὰ τῶν κρατούντων». Plutarch (75 AD), *Lives/Solon*, transl. J. Dryden in The MIT Internet Classics Archive, p. 20

² G.R. Stanton (1990), *Athenian Politics, c. 800-500 BC: A Sourcebook*, New York: Routledge, pp. 34-40

take part in political life was justified as a means of achieving political consensus and social peace.

The need to employ institutional means to attract Athenians to the public assembly (*Ecclesia*) was also recorded a few centuries later. Before 403 BC, when payment of a triobol as compensation for assembly attendance was introduced, citizens avoided getting involved in the city's affairs unless forced to do so. The famous comic playwright Aristophanes called them 'runaway citizens'.³ He makes a clear reference to them in his satiric play *The Acharnians*:

*'As now, when here's the fixed Assembly Day,
And morning come, and no one in the Pnyx.
They're in the Agora, chattering, up and down,
Scurrying to dodge the rope dripping red.'*⁴

In fact, there is evidence that,

*"official attempts were made to encourage Assembly-attendance by blocking streets that did not lead to the Pnyx, removing goods for sale from the market place, and stretching out a long ochred cord, manned by bowmen, which was used as a sort of dragnet, with anyone whose clothes were stained by it being subject to a fine."*⁵

Aristophanes mocks the authorities for this practice by making his comic hero Dicaeopolis shout: *'O city, city! I am always first to come to the assembly and sit there'*.⁶ Although the literal meaning of this passage is questioned by Olson, it may be that historical reasons indeed explained the introduction of such a practice in ancient Athens. According to one interpretation, the Peloponnesian War had

³ «διαδρασιπολιται», Aristophanes (405 BC), *Frogs*, 1014

⁴ «Δικαιοπόλις : ὡς νῦν, ὅπῳτ' οὕσης κυρίας ἐκκλησίας ἐωθινῆς ἔρημος ἡ πνύξ αὐτή, οἶδ' ἐν ἀγορᾷ λαλοῦσι κᾶν καὶ κάτω τὸ σχοινίον φεύγουσι τὸ μεμιλωμένον». Aristophanes (425 BC), *The Acharnians*, transl. B.B.Rogers, pp. 19-22.

⁵ S.D.Olson (2002), *Aristophanes Acharnians. Text and Commentary*, Oxford: Oxford University Press, p. 73

⁶ «ὦ πόλις πόλις, ἐγὼ δ' αἰπρώτιστος εἰς ἐκκλησίαν νοστῶν κάθημαι», Aristophanes 425 BC, pp. 27-29

produced many casualties, causing an abrupt drop in the numbers of citizens attending the Assembly forum.⁷ Of course, other explanations cannot be excluded, for example, the hypothesis that the practice was only intended to diminish the noise and distractions of the marketplace during the public meetings.⁸

In general, civic commitment to community was a *sine qua non* of the ancient Greek ideal of democracy. It is underlined by Pericles in his famous Funeral Oration:

*‘For we alone regard the man who takes no part in public affairs, not as one who minds his own business, but as good for nothing; and we Athenians decide public questions for ourselves or at least endeavour to arrive at a sound understanding of them, in the belief that it is not debate which is a hindrance to action, but rather not to be instructed by debate before the time comes for action’.*⁹

In other words, self-government and participation in public life, in particular in the processes of deliberation and decision-making, was a way of life for the Athenians, not just a type of government.¹⁰ Devotion to the community and a continuous readiness to actively serve it are crucial elements of that model of life.¹¹

Of course, the ideal of political duty inspired the classic Greek philosophers Plato and Aristotle. In his *Republic*, Plato explicitly attacks those who abstain from state affairs: *‘the chief disadvantage for he who does not want to rule is to be ruled by someone who is worse than himself’.*¹² In this context, ruling is understood as a synonym of self-government that includes both voting and policy-making. In an ideal society, says Plato, it is not money or honour but fear of bad governance that drives men into

⁷ R.Hasen (1996), ‘Voting without Law’, *University of Pennsylvania Law Review* 144, p. 2135, n. 2

⁸ *Ibid.*

⁹ Thucydides (431 BC), *History of the Peloponnesian War*, transl. Ch.Smith, Cambridge, MA: Harvard University Press 1928, Book II, 40.2, pp. 328-329

¹⁰ J.Dunn (2005), *Setting the People Free: The Story of Democracy*, London: Atlantic Books, p. 27

¹¹ The obligation to serve the community was accentuated by the law on ‘liturgies’, which obliged wealthy Athenians to pay for a number of public services, e.g. military, religious, cultural. This practice was an early manifestation of the idea that nobility comes with obligation.

¹² «Τῆς δὲ ζημίας μεγίστη τὸ ὑπόπνηροτέρου ἄρχεσθαι εἰάν μὴ αὐτὸς ἐθέλη ἄρχειν», Plato (360 BCE), *Republic*, I, 347, 25, transl. B.Jowett in The MIT Internet Classics Archive

politics. In other words, individuals take part in politics because they are driven by their personal interest in self-preservation.

The importance of civic engagement was further highlighted by Aristotle, who wrote that '*liberty meant ruling and being ruled in turn*'.¹³ In other words, an alternation between command and obedience is the best guarantee of a free state and a free citizenry. Electing and ruling are equivalent political acts and bear the same value for a democratic government. What more, rulers and subjects (or statesmen and citizens) must possess similar qualities. Aristotle concludes that every citizen, even those who do not hold an official position in government, must share an interest in public affairs similar in amount and intensity to the interest of those who do hold public office.

However, Aristotle denies that the Athens of his time had a practice of obligatory attendance in place. On the contrary, he is critical of such laws as may exist in oligarchies. Everyone had the right to register or not to participate in the Assembly and on a jury, yet those who had registered but failed to attend would receive large fines. The rationale was to discourage people from registering and thus from exercising their rights. This was similar to the practice of imposing fines for non-attendance on wealthy citizens only, a common 'device by which oligarchies deceive the people'.¹⁴ On the contrary, a democracy, instead of stirring up fear of poor people, would, according to Aristotle, reward the poor instead for their attendance and refrain from punishing the rich for failure to attend.

The vitality of political participation lies at the core of classic political thought and is underlined by evidence of an institutional practice that actually obliged citizens to attend the Athenian *Ecclesia*. Indeed, the reforms of Solon and the description of Aristophanes provide evidence of a kind of ancient prototype of the modern obligation to vote. Yet, Aristotle's work shows that the ideal of democratic engagement and the existence of a legal obligation were not necessarily compatible, as the latter was subject to tactical manipulation. Hence, already since ancient times,

¹³ «*Ελευθερίας ἐν τῷ μέρει ἄρχειν καὶ ἄρχεσθαι*», Aristotle (350BC), *Politics*, transl. B.Jowett in The MIT Internet Classics Archive, Book 6, Part II

¹⁴ Aristotle (350 BC), *Politics*, transl. B.Jowett in The MIT Internet Classics Archive, Book 4, Part XIII

it has been clear that norms cannot apply to political life as they are, but must take into account the role of the human factor.

Obligation to vote in small early-modern communities

The Aristotelian idea that citizens, like princes, should privilege the common good over their private interests reappears centuries later during the Italian Renaissance. For example, it is found in the concept of *virtu* preached by Macchiavelli in the 16th century: ‘*It is not private interest but common good that makes cities glorious*’.¹⁵ This republican idea of civic engagement is a straightforward reappraisal of the ancient ideal of citizenship.

The story of compulsory voting can also be traced back to municipal customs of the Late Middle Ages that survived in France, Switzerland and their sister republics. A deeply rooted obligation to vote was indeed not uncommon in small communities before the nineteenth century. For example, it was found in the official record of municipal elections from the year 1354, in the city of Toulon. According to a local pamphleteer, this small commune in the southern county of Provence had inherited a system of political representation from its Roman past.¹⁶ By tradition, the citizens met in ‘public parliaments’ to discuss matters of common interest. Depending on the occasion, they designated individuals to represent the city, first selecting them directly, but after 1315 through a body of electors.

In fact, according to Teissier, it was this change to indirect elections that soon produced electoral apathy. When the citizens lost their role as legislators and became merely indirect voters, they ceased to be interested in public affairs and deserted the parliaments; these in turn were reduced to raucous gatherings, monopolised by violent

¹⁵ ‘*non il bene particolare, ma il bene commune é quello che fa grandi le città*’, N.Machiavelli (1513), *Il Principe*, 222. Q.Skinner (1981), *Machiavelli*, Oxford: Oxford University Press, pp. 90-91.

¹⁶ O.Teissier (1868), *Le Suffrage Universel et le Vote Obligatoire à Toulon*, Paris: Dumoulin, p. 8. Octave Teissier was originally from Toulon and worked as a historical research correspondent of the French Ministry of Public Instruction.

minorities that gave them a more closed and exclusive character.¹⁷ In order to fight mounting electoral abstention, Robert of Anjou issued an edict on 18 April 1340 that voting in two-degree indirect elections would be universal and mandatory, punishable by a fine. According to the Official Record:

*'It is ordered by our king and our queen from Jerusalem and from Sicily, that every man over 14 years of age, shows up tomorrow, after the morning mass, in the royal palace of the city of Toulon, in the presence of the bailiff, against a fine of 12 deniers, in order to create and nominate the councillors and the other officers of the said city'.*¹⁸

The fine of twelve deniers (i.e. one sou) was soon raised to five sous.¹⁹ This legal action was seen as a viable means of countering the increasing civic passivity as expressed in the growth of electoral abstention.

Another antecedent to voting duty has been discovered in the annual citizen assemblies of Switzerland in the eighteenth century and much earlier. At these ceremonial meetings, known as *Landesgemeinde*, participants were required to show up wearing their swords. Carrying a sword distinguished active citizens — free and independent men — from the rest of the people, who were *ehr- und gewehrlos*.²⁰ This ceremonial obligation was justified by the strong symbolism of these meetings, where people swore loyalty to the customs and elected authorities of their homeland. In the country of Uri, if a member did not turn up or turned up without his sword, he was refused admittance to the free dinner offered by the *Landamann* to the citizens of the canton.²¹ Similar punishments were in place in other cantons: in 1764 and 1765 in Schwyz not carrying the sword provoked revocation of the right to vote; in Nidwalden and Appenzell citizens had to pay 5 pounds (*livres*); in Glaris since 1836 they either

¹⁷ G. Lambert (1887), *Histoire de Toulon*, Partie 1, Tome 2, Toulon: Du Var, p. 28

¹⁸ *"Mandamentum est dominorum nostrorum Regis et Regine Jherusalem et Sicilie et sui bajuli, quod omnis homo majoris annis XIIIcimo cras in exitu, prime misse, compareat in palation region et reginali civitatis predicte, coram eodem domino bajulo, sub pena, pro quolibet, XIIIcimo denarius ad creandum et ordinandum, consiliarios et alios officiales dicte civitatis"*. *Procès-verbal de l'élection municipale du 15 avril 1354*. Teissier 1868, pp. 13-14 (here transl. from French)

¹⁹ A sou was divided into twelve *deniers* and twenty *sous* made one *livre*.

²⁰ S. Deploige (1893), 'Le vote obligatoire en Suisse', *Revue Générale*, p.5

²¹ *Ibid.* p. 6. W.A. Robson (1923), 'Compulsory Voting', *Political Science Quarterly*, 38/4, p. 570

paid 2 pounds or were suspended from public office for one year. Yet, even when no legal punishment existed as in the canton of Zug, the people still tended to join the *Landesgemeinde* in large numbers.

Evidence that this medieval custom of obligatory direct participation in community affairs survived exists through the French Revolution. In early 1789, when King Louis XVI ordered the French people to delegate representatives from the three estates, he also asked them to record all their ‘complaints, grievances and demands’ in special notebooks for his attention. It turned out that many of these ‘*Cahiers de Commune*’ contained not only complaints, but also constructive proposals on questions of governance.

In particular, the Cahiers of the Commune of Aurons, sénéchaussée²² of Aix, issued on 29 March 1789, included the following suggestion: “*Tout homme âgé de 25 ans et qui aura droit de voter dans les assemblées municipales, qui se tiendront à cette occasion, s’en fera un devoir sacré et sera mis à une amende commune s’il vient à le négliger*”.²³ This attempt to transfer a political practice from the French periphery to the central government in the run-up to the Revolution did not bear fruit. Nevertheless, the idea appeared again in the Republic of Batavia,²⁴ whose Constitution of 29 March 1798 was strongly influenced by the French (Article 14). Yet, the demise of the Batavian Republic in 1806 made the Constitution equally short-lived, after which the idea of compulsory voting disappears.

A similar tradition emerged in another young state influenced by French institutions, namely Greece. The Law on the organisation of municipalities and communes, which dated from 27 Dec. 1833, indicated in Art. 14 that ‘*every member of the community who has the right to vote must attend the municipal elections and vote in them*’.²⁵

²² Sénéchaussée was a territorial constituency in southern France that corresponded to the jurisdiction of a criminal court.

²³ Cahiers de la communauté d’Aurons, Sénéchaussée d’Aix, 29 March 1789, art.36, par.4 in J.Mavidal-E.Laurent (eds.), *Archives parlementaires de 1787 à 1860; 2-7. États généraux; Cahiers des sénéchaussées et bailliages*, Série 1, T.6, Paris: Dupont 1879, p. 258

²⁴ H.Geffcken (1909), *Die Wahlpflicht*, Berlin: Heymanns, p. 160

²⁵ «πᾶς δημότης, ἔχων τὸ δικαίωμα τοῦ ψηφοφορεῖν ἀφείλει νὰ παραυρισκεται εἰς τὰς δημοτικὰς ἐκλογὰς καὶ νὰ ψηφοφορῇ κατ’αὐτάς», *Journal of The Government of The Kingdom of Greece*, n.3, 10 Jan. 1834

Unless two thirds of the electorate took part in the local elections, the result was considered invalid. In that case, those amongst the non-participants who had not been impeded by sickness or geographical distance were invited to a by-election and had to pay the expenses for it. Although the legal obligation of abstainers to organise the next election was simple in theory, its enforcement was very difficult and apparently the law was barely functional.²⁶

In this context, the enforcement of voting derives perhaps from the eagerness to establish electoral democracy in the young Greek state. In an effort for national revival, drawing parallels to ancient Greece had become customary and the love for democracy was considered to be 'natural'. In reality, the proneness to adopt democratic institutions developed from the self-managing commune system in force during the Ottoman era, the spirit of equality and solidarity produced by the Greek War of Independence in 1821, and the relative lack of polarisation of nineteenth century Greek society.²⁷ This explains also the precocious introduction of universal suffrage in 1864, in comparison to other European states, which was out of proportion to the country's slow industrial, social and political development. In any case, electoral obligation in communal elections was adopted only in theory in 1833, since the system was never successfully enforced.

Although these legacies may be considered part of the archaeology of compulsory voting, there is a stark difference between what happened in small communities and the conditions prevalent in larger states. In the countryside, the voting obligation responded to the need for the '*direct effectiveness*' required for the exercise of local power and regional sovereignty.²⁸ At least with regard to the Swiss local assemblies, it is fair to say that they operated a system of direct democracy. Citizens did not assemble to vote only nominally or by acclamation; they were not ordinary electors.

²⁶ E.Kyriakopoulos (1932), *Ellinikon Syntagmatikon Dikaion* v1, b1, Thessaloniki: M.Triantafyllou, p. 293, n. 1

²⁷ G.Sotirellis (1991), *Syntagma kai Ekloges stin Ellada 1864-1909: Ideologia kai Praksi tis Katholikis Psifoforias*, [Constitution and Elections in Greece 1864-1909: Ideology and Practice of Universal Suffrage], Athens: Themelio, pp. 86-91, pp. 433-434

²⁸ H.Geffcken (1909), 'Die Wahlpflicht', *Zeitschrift für Politik II*, p.160, n.2. H.Triepel (1900), *Wahlrecht und Wahlpflicht*, Dresden: Zahn & Jaensch, pp. 15-16. Furthermore, Triepel explains that only attendance at the assembly was obligatory, not voting as such, perhaps because voting was not secret at the time.

To the contrary, they acted as legislators and had a rather substantial role in decision-making: they discussed laws, voted on taxes and appointed officials. This was not comparable to the voting obligation in large parliamentary democracies, which involved choosing representatives and delegating power; rather, the citizens exercised it directly. In this context, the obligation to participate was more urgent, because one's absence had a more substantial influence on the course of public affairs.

In addition, the population of smaller communities traditionally enjoyed higher levels of integration and a greater sense of belonging, due to physical proximity and to the informal yet strict mechanisms of social control. As a result, people had a greater sense of social responsibility and urge to participate in collective activities. Conversely, the slackening of social ties in larger communities automatically produced a higher level of political abstention.²⁹ Therefore, a line must be drawn between the early modern concept of political duty, or the 'duty of the country man' practiced in rural France or Switzerland, and the voting obligation applicable to modern societies.

'Noblesse oblige'

Besides direct elections, a second crucial difference of the early modern concept of electoral obligation was the limited nature of suffrage. From antiquity up until the nineteenth century, the responsibility to participate in public affairs did not belong to every member of society, but only to the wealthy. In other words, nobles were the 'appropriate' holders of the virtue of political obligation. In the medieval ages, the identification of noblemen with men of duty and chivalric honour was tied to pragmatic circumstances. It emanated from the nobility's close links to the monarch, to whom they were obliged to offer certain services, for example, taxation and military service, in exchange for the ownership or administration of land. Until the

²⁹ J.P.Jessenne (1990), 'De la citoyenneté proclamée à la citoyenneté appliquée: l'exercice du droit de vote dans le District d'Arras en 1790', *Revue du Nord*, 72, p. 825. M.Crook (1996), *Elections in the French Revolution: An Apprenticeship in Democracy, 1789-1799*, Cambridge: Cambridge University Press, pp. 63-64

French Revolution, nobles also served as members of provincial parliaments, a function they carried out with a similar sense of duty and responsibility.

The noble conception of virtue implied a genuine subordination of self-interest and a love of equality. *'Honour is his treasure. He obeys only discipline, that is to say, the laws of his country. He gives his life for the tranquillity of his fellow citizens. He loves his kind and his country; he serves both with zeal'*.³⁰ Thus, nobility was bound to a morality of self-sacrifice in the battlefield and beyond. It included a devotion to public affairs and a general aversion to individualism and egoism. These ideas were directly borrowed from the 'classic republican' philosophy of the ancients, whose rediscovery greatly influenced eighteenth-century France. For example, Montesquieu referred frequently to Solon's Laws, including to the passage concerning the obligation to take part in public affairs.³¹

Civic virtue remained a matter of upper social class consciousness until the nineteenth century. Nobles were expected to maintain an *'exact and reasoned intelligence of their special duties, which devolve upon their social position'*.³² And the more the landed nobility was falling apart as a social class, the more the preservation of this morality became an end in itself as a protection against their decline.³³ The maintenance of a tradition of virtue and the observance of old altruistic values created a cultural and moral status that went well with the new interests of nobility. As a result, by the time of the Revolution, noble virtue had become a legitimate justifying axiom of the ideology of the French conservatives.

Voting function vs. voting right

³⁰ Chevalier d'Arc, *La Noblesse Militaire ou le Patriote françois*, Amsterdam 1756, p. 102

³¹ But he justifies such an obligation only in the context of the small ancient Greek states, which were afraid that the lack of 'virtuous' citizens would lead to a radicalisation of political strife. In monarchies, parties and politics are populated by few enlightened people, hence there is no need to involve the many. M.de Montesquieu, *De l'esprit des lois* (1748), Livre XXIX, Chapitre III, Paris: Gallimard 1995; J.N.Shklar (1990), "Montesquieu and the New Republicanism", G.Bock, Q.Skinner, and M.Viroli (eds.), *Machiavelli and Republicanism*, Cambridge: Cambridge University Press, pp. 265-79

³² T.DeRennesse (1889), *Noblesse Oblige!*, Brussels : Polleunis, p. 9

³³ J.H.M.Salmon (1981), "Storm over the Noblesse", *The Journal of Modern History*, Vol. 53, No. 2, pp. 242-257

The language of voting as a function has persisted in France since the time of the Revolution. The idea that electoral choice is a task, to be carried out with full consciousness and responsibility for its consequences, had been used time and again by the French Right to defend the ideology of limited suffrage. Only those voters who possessed sufficient intellect and interest equal to the task should be allowed to vote. It is within this debate on universal suffrage that the concept of voting as a function acquired its special semantic value, which it maintained throughout the nineteenth century.

In particular, the concept of a voting ‘function’ grew in tandem with the revolutionary idea of a voting ‘right’. Their paradigmatic debut in these first historical voting debates came when the Third Estate demanded that voting rights be extended to the working classes. Robespierre, Condorcet, Pétion and other followers of Rousseau argued that the voting right was natural and belonged to all human beings simply by virtue of their existence on earth.³⁴ And so, in the following decades, the right to vote would become a persistent goal of the working classes in their quest for political equality.

On the opposite ideological side the moderates used the argument of voting function (*fonction*) to defend their aristocratic ideology of limited suffrage. Sieyès, Barnave and Thouret and other bourgeois supporters of the Revolution attacked those who understood suffrage as a natural right, arguing that “*ils ont pu confondre avec les droits du peuple la qualité d’électeurs, qui n’est qu’une fonction publique à laquelle personne n’a droit, que la société dispense ainsi que le lui prescrit son intérêt*”.³⁵ Suffrage was a ‘function’ and not a ‘right’; it could not be granted to everyone, because it had a larger scope than that of individual rights. In his speech to the Constituante on 11 August 1791, Barnave explained that voting was exercised ‘for all’ (*pour tous*), for the whole society, unlike individual rights, which existed only for the sake of individual interest. In other words, voting was the central expression of the

³⁴ Robespierre, cited in Crook 1996, p. 33

³⁵ A. Barnave (1791), Speech to the National Assembly, 11 August 1791, M. Mavidal-E. Laurent (eds.), *Archives parlementaires de 1787 à 1860*; 8-17, 19, 21-33. *Assemblée nationale constituante, t.29. Du 29 juillet au 27 août 1791*. Paris: Dupont 1875-1889, p. 366

republican virtue of self-sacrifice and communal altruism, which the conservatives had ‘inherited’ from their noble ancestors.

Society had the right to determine the objective conditions (*qualités*) for being a voter, and these were listed under the rubric of ‘*capacités*’. They included property qualifications, tax payments, education degrees, residence requirements and other conditions, which changed continuously and inspired many a parliamentary debate in the first half of the nineteenth century.³⁶ According to the most prominent advocate for these conditions, the source of the right to vote was capacity, which was dependent almost everywhere on education, independence, and a spirit of order and conservation.³⁷ The central argument was quite plain: voting was demanding, so it could be granted only to persons that had the knowledge, maturity, freedom and interest to judge what is best for the whole of society.

In fact, the semantic nuances of the key concept ‘*fonction*’ have been little studied. The French word is the equivalent of the English idea of voting as a ‘trust’.³⁸ Both terms conveyed the same principle: suffrage was owned by the state and consigned to citizens only if they could ‘afford’ it. Although it is often rendered in English as the ‘duty’ to vote, ‘*fonction*’ corresponds better to ‘political office’, ‘task’ or ‘work’. In the context of the suffrage rhetoric, the connotation was neither of a moral obligation to the state nor a cumbersome burden, but referred to the complexity and difficulty involved in the process of voting.

In addition, the practice of public (not secret) voting at the time accentuated the accountability involved in pronouncing one’s political choices. To be more exact, the emphasis on voting as an activity that was supposed to be exercised in light of the public interest and under the glare of the public eye made suffrage an act of political responsibility, an honorary calling by the community, a vocation. Hence, in the

³⁶ A.Kahan (2003), *Liberalism in Nineteenth-Century Europe: The Political Culture of Limited Suffrage*, New York: Palgrave. P.Rosanvallon (1992), *Le Sacre du Citoyen*, Paris : Gallimard, pp. 269-327.

³⁷ F.Guizot (1831), *Moniteur Universel*, 10 February 1831, p. 278-1; Kahan 2003, p. 38, Rosanvallon 1992, pp. 302, 309, 317

³⁸ *Ibid.* p. 38

context of the debates on universal suffrage, voting duty included the notion of voting as a vocation, which made the justification of restricted franchise all the more easy.

Voting function continued to be the dominant doctrine during the Restoration and the July Monarchy, and did not disappear completely even after the introduction of universal suffrage in 1871. The liberal-conservative spectrum consistently treated suffrage as a symbol of belonging to a community, thus a matter of civic responsibility. Throughout the nineteenth century, they recycled the old views about a common right, which must be distributed according to social hierarchies. The tradition was continued by monarchists such as Royer-Collard and Bonald, who agreed that: “*l’élection est de droit commune, et non de droit individuel; elle appartient donc à la commune et non à l’individu*”.³⁹ Voting function, due to how it was originally read, remained strongly linked to non-democratic perceptions of the state in the French collective consciousness.

Indeed, the political struggle between revolutionary demands for expanding the franchise and liberal-conservative defences of the *status quo* had a bearing on the conceptual dichotomy between voting right and voting function. In a synecdochic manner, this rhetorical configuration led to a generalised view that ‘voting right’ stands for political inclusion and ‘voting function’ for political exclusion. Entangled in this argumentative juxtaposition, the duty to vote started to lose its initial sense of being a democratic obligation, vocation and responsibility, and was more and more (mis)conceived as an antonym of the right to vote, in other words, a *non-right* to vote.

For, in reality, the voting-function doctrine automatically implied restricting the right of the many to participate, and thus politically marginalising and excluding them. “*La théorie du vote-fonction implique une idée de choix, de sélection*” (emphasis added).⁴⁰ It had little to do with the notion of political responsibility and moral task that corresponded to the actual semantics of voting duty. In the battle over universal suffrage, the two sides deliberately depreciated the original content of voting function

³⁹ Bonald (30 décembre 1816), *Archives Parlementaires de 1787 à 1860*, 2ème Série (1800-1860), t.17 (1 Avril au 30 Décembre), Paris: Dupont 1870, p. 771

⁴⁰ N.Quiri (1908), *Le vote obligatoire*, Thèse pour le Doctorat, Faculté de Droit, Université de Paris, Paris: Michalon, p. 35

qua obligation, and stressed instead voting function *qua* exclusion, in order to achieve their differing aims of limiting or expanding the right to vote. Thus, the two concepts became ideological arsenal in the hands of two opposing political projects, which in turn expressed the social competition endemic in eighteenth and nineteenth century France.

Universal suffrage vs. massive abstention

Despite the early victory by pro-universal suffrage advocates in 1789, in reality there was mounting abstention in the elections of the First Republic. Only 23.5% of the population voted in 1791 in the primary assemblies and 10% in 1792,⁴¹ with further declines in the years to come. The situation seems to bear out a central claim of anti-suffrage rhetoric that voting was too difficult and important a task to be left to the hands of just anybody. Mocking the revolutionary struggle for universal suffrage, Barnave noted that “*c’est moins dans la jouissance effective du droit que dans la possession du droit qu’existe leur satisfaction*”.⁴² Indeed, acquiring the right to vote seemed to matter much more to the common people than exercising it.

On the other hand, low participation rates caused great disappointment among those who had crafted the First Republic. In his address to the Assembly on 27 May 1791, Pétion admitted that less than one fifth of the entitled voters had shown up at the polls. Astonished at the stark decrease compared to the earlier assemblies of 1789, Peuchet complained:

“On conçoit avec peine, que les assemblées d’élections aient pu devenir moins nombreuses à mesure que les droits politiques ont acquis du développement et de la solidité ; il est difficile d’assigner une cause à l’indifférence qu’ont successivement marquée pour le droit de suffrage la plupart de ceux qui semblaient devoir plus

⁴¹ M.Edelstein (1993), “La participation électorale des Français (1789-1870)” in *Revue d’histoire moderne et contemporaine*, vol.40^e, no.4, pp. 629-642

⁴² Barnave 1791, p. 368

*particulièrement y tenir ; on s'étonne [...] qu'on ait fait de l'activité citoyenne une prérogative abstraite, sans concours effectif à l'organisation des pouvoirs".*⁴³

Electoral participation had become ineffective and abstract, more ceremonial and less substantial. The main reason was the system of two-degree or indirect suffrage, which gave the right to deliberate and to make real decisions only to second-degree electors. Members of the primary assemblies were restricted to only designating second-degree electors, and were thus put in the role of providing merely a veneer of legitimacy for the representative procedures.⁴⁴ But, participation was also held back by cultural and situational factors, such as the inexperienced electorate⁴⁵ and the lack of real competition between the political factions, which often resorted to boycotts and the use of fraudulent techniques to determine electoral returns.⁴⁶

Reversing this situation became an especially urgent call for the radicals, who wanted to show that the people would not return to dormancy. Hence, they tried to get voters to the polls by actively campaigning and using moral pressure. Their actions were aimed at underlining the importance of the vote, and this can rightly be considered a forerunner to the legal obligation. First, the Luxembourg section of the Paris Commune suggested in 1791 that the names of the abstainers be published as a disgrace, while those who faithfully turned out to vote should be awarded a medal.⁴⁷ The Bondy section had already issued a warning to prospective non-voters, that if they failed to show up at the polls three times in a row, they would be branded 'bad citizens' and become ineligible for receiving a *certificat du civisme*. A third section called on its members to make sure their friends and relatives voted, by '*shaming them into attendance*' or even by using force. Moral reprimand was seen as a harmless method to canvass potential voters for republican candidates.

Still, in 1793 non-attendance at primary assemblies continued to be a major concern. Those who had failed to participate in the previous municipal polls were not just

⁴³ J. Peuchet (1791), "Élections", *Le Moniteur universel*, 17 June 1791, t.VIII, p. 675

⁴⁴ Rosanvallon 1992, p. 245

⁴⁵ Crook 1996, p. 78

⁴⁶ P. Gueniffey (1993), *Le nombre et la raison : La Révolution française et les élections*, Paris : EHESS

⁴⁷ Crook 1996, p. 98

random members of society, but for the most part reportedly ‘*better-off citizens*’.⁴⁸ Unlike manual workers, they had no excuse to abstain for ‘*seeking some relaxation*’. Moreover, after the elections they usually resorted to making cheap-shot criticisms of the results. Therefore, it was agreed that their names would be noted down and labelled as ‘*enemies of the people*’. Thus, the idea of enforcing the vote through moral disapprobation became part of the electoral practice as one possible solution against abstention in municipal elections. In an urgent attempt to rally their forces, especially from the bourgeois side, Communards developed a distinctive rhetoric of civic-mindedness and moral competence. From a rhetorical point of view, their plea bore similarities to the antagonistic discourse of voting duty developed by their enemies in the National Assembly, although the Communards’ aim now was to include rather than exclude citizens.

Early nineteenth-century politics of abstention

In the early years of the Restoration, the credibility of electoral outcomes was hit again by low voter turnout. This decreased voter confidence in the elected members of Parliament, as well as Parliament's weight and authority. In addition, it gave a basis on which non-elected deputies and their supporters could challenge the results. As Guizot argued, “*la nomination de chaque député doit être le résultat du concours de tous les électeurs du département, et non l’ouvrage de telle ou telle portion déterminée de ces mêmes électeurs* (emphasis added)”.⁴⁹ Guizot was specifically preoccupied over the Jacobin faction, which was very efficient in mobilising its electorate and could make swift advances in the electoral struggle. It was thought that an increased turnout would prevent the Jacobins from capturing a broad percentage of the electoral outcome. So, redesigning the electoral procedures to attract more voters was a means of safeguarding the conservative-liberal majority in the Assembly.

⁴⁸ Ibid.

⁴⁹ Guizot (28 novembre 1816), *Archives Parlementaires de 1787 à 1860*, 2ème Série (1800-1860), t.17 (1 Avril Au 30 Décembre), Paris: Dupont 1870, p. 561-562

Since abstention in the revolutionary elections was mainly blamed on the establishment of two-degree elections, establishing direct elections seemed a right course for increasing participation. Thus, a new electoral law introduced in 1817 abolished the electoral colleges. With the new system, voters would know their representatives better and feel closer to them; conversely, this would lead the latter to make better policy decisions and increase the reciprocity of moral responsibilities between representatives and the represented.⁵⁰ Direct elections would also politicise voters and rekindle their passion for politics and thus their tendency to attend the polls. However, this innovation had as a trade-off the introduction of an electoral census, which sharply decreased the number of eligible voters: in 1817 only around 80,000 French men were eligible to vote.⁵¹ Thus, despite hopes of increasing electoral participation by introducing direct elections and at the same time limiting suffrage access, the 1817 reform did not change things as expected. The elections of 1817 and 1818 attracted only one third and one half of eligible voters, respectively.⁵²

Hence, it is not surprising that low participation became a hot topic between French Republicans and Ultra-royalists in the spring of 1819. The Ultras protested against their defeat of the previous year, arguing that it was due to low-level turnout, which distorted the meaningfulness of the electoral operations and did not convey the real strength of the royalist faction.⁵³ On the other hand, Republicans blamed abstention on the material obstacles to electoral attendance: voters had to travel to the administrative centres of their provinces to cast their vote, which were often long journeys involving overnight stays on the road and other practical inconveniences. But the Ultras insisted that precisely these were the conditions that had prevented the royalists, the great bulk of whom resided in the countryside, from attending the polls. In fact, electoral participation in Paris, where the distances to cover were short, was much higher, 73% and 76% in 1817 and 1818, respectively. This gave an electoral edge to the Republicans, who drew their support mostly from the urban centres. In

⁵⁰ Ibid.

⁵¹ These numbers increased slightly to 165,583 voters in 1831 and 240,983 in 1846. Ministère de l'agriculture et du commerce, Service de la statistique générale de France (1878), *Annuaire statistique de la France*, Paris: Imprimerie Nationale, 'Statistique Électorale', Tableau no.4, p. 566

⁵² Rosanvallon 1992, pp. 284-285

⁵³ Chateaubriand (1819), "Sur les dernières Élections", *Le Conservateur*, t.4, Paris: Normant Fils, pp. 612-633

other words, abstention did not impact the two sides evenly and therefore it had become a contentious issue.

But the abstention of royalist voters was neither an accidental nor an isolated event. The majority of its Legitimist faction was, in fact, deliberately following a policy favoured by the pretender to the throne Comte de Chambord. Their refusal to engage in electoral politics came less from resignation than from strategic considerations.⁵⁴ First, abstentionism expressed their discontent and unwillingness to compromise with the new political regime. Second, fidelity to the abstentionist line prevented factionalism and defections and tightened Chambord's control over the Legitimist movement. Third, elections as such posed a danger for them, for it allowed the central state and other political forces to intrude into local communities, where royalists had been successfully integrated. Especially in Western France, the dominance of Legitimist notables over the peasantry was such that they could undermine the state's ability to control the provinces and show contempt for seeking electoral power. Despite regional variations and an increase in the general tendency to engage in politics, abstentionism tended to serve the interests of royalist nobility.

On the other side, Republicans tried to benefit from the royalist politics of abstention and engaged in concrete efforts to mobilise their electoral base in the last years of the Restoration period. In the summer of 1827, liberal associations, like the *Société Aide-toi, le ciel t'aidera* distributed leaflets in the country that encouraged recently qualified voters to get registered on the electoral rolls.⁵⁵ Of course, this was primarily campaign material, aiming at attracting votes away from the opposition. Nevertheless, by succeeding they raised the overall level of electoral participation, as is shown statistically. In the election of 1827, participation climbed to 86.4% in the *collèges d'arrondissement* and 81.9% in the *colleges de département*. It remained generally over 75% between 1831 until 1846, fairly higher than in 1815 and before, especially compared to the notoriously low turnout rates in the revolutionary elections.

⁵⁴ S.Kale (1997), "French Legitimists and the Politics of Abstention, 1830-1870" in *French Historical Studies* Vol. 20, No. 4, pp. 665-701

⁵⁵ The Law of 2 May 1827 extended the list of eligible jurymen and voters to include academics, doctors and notaries. S.Kent (1975), *The Election of 1827 in France*, Cambridge, MA: Harvard University Press, pp. 88-96

To conclude, during the first half of the nineteenth century, efforts to increase participation followed more a ‘carrot’ than ‘stick’ approach, since they focused on attracting and encouraging voters. In addition, institutional solutions were sought, such as direct elections and census suffrage. Compulsory voting, however, was not mentioned as an option at all. In the meantime, abstention had become a strategy for some and an issue of contention for all, due to its political effects.

Table 1. Electoral Abstention in France from 1815 to 1846

Date	Abstention	Participation
<i>First Empire</i>	<i>department - arrondissement</i>	
May 1815	60.9% - 46.9%	≈ 46.1%
August 1815	26.3% - 30.0%	≈ 71.9%
October 1816	28.6% - 22.1%	≈ 74.7%
March 1824	21.6% - 14.9%	≈ 81.8%
November 1827	18.1% - 15.7%	≈ 83.1%
June-July 1830	12.6% - 8.5%	≈ 89.5%
<i>July Monarchy</i>		
July 1831	25.1%	74.9%
July 1834	24.4%	75.6%
November 1837	23.6%	76.4%
March 1839	18.0%	82.0%
July 1842	21.0%	79.0%
August 1846	17.0%	83.0%

Source: Annuaire statistique de la France 1878, p. 566

Chapter 3: Parliamentary proposals in France, 1848–1893

The first attempts to make voting mandatory by law occurred during the Second Republic. From 1848 until 1850, the conservatives proposed making voting compulsory in national elections in order to curb universal suffrage and control electoral outcomes. But over the next two decades, abstention became a common phenomenon, often as a strategy of disobedience against the Emperor Napoleon III. For example, Proudhon's call for boycotts in 1863 as a kind of veto-power against the imperial government, was juxtaposed against the vocation concept of electoral participation. The conceptual conflict between voting boycotts and voting duties summarises a classic conundrum regarding the process of political change: whether it should happen via formal political institutions or from outside these conventional routes.

During the first years of the Third Republic, a full-scale political discussion on the merits of obligatory voting developed and was carried out through political pamphlets and academic journals. In fact, it was only when voting restrictions based on financial, administrative and educational criteria were abolished and universal suffrage established for good that the legal obligation came onto the agenda. It is as if the politicians who had always opposed universal suffrage were now recycling the old and safe concept of voting function and re-describing it in order to protect the state from a 'tyranny of minorities'. Hence, the defence of political obligation was now not only a matter of principle, but of political survival.

Obligation as a limitation of universal suffrage (1848-50)

In February 1848, the uprising in France led to the adoption of universal male suffrage and the announcement of elections. In the bipolar struggle over the nature of suffrage, this marked the defeat of the conservative ideology of voting capacity. At

the same time, however, the 1848 elections would create an overwhelming parliamentary majority for the Party of Order, proving that the reality of universal suffrage was not so disastrous for them after all. For, in reality, universal suffrage was not practised ‘universally’, despite the verbal orders and personal pressures put on voters to participate.¹ A public notice issued before the April 1848 elections urged voters to register on the electoral rolls: “*la sincérité de l’élection sera d’autant plus certaine aux yeux de tous, que l’universalité des citoyens aura donné son concours à la nomination des représentants du peuple*”.² Abstention was treated as an enemy that had to be defeated, while voters who abstained were supposed to feel social and personal shame. It was mainly the lower classes in the bigger city centres who tended to miss the polls, which raised serious concerns among the Left about the ‘immaturity of the people’ to measure up to the demands of universal suffrage. On these grounds, Blanqui and Cabet demanded a postponement of the 1848 elections:

*“Ces élections seraient dérisoires. À Paris, un très petit nombre d’ouvriers sont inscrits sur les listes électorales. L’urne ne recruterait que les suffrages de la bourgeoisie. Dans les villes, la classe des travailleurs, façonnés au joug par de longues années de compression et de misère, ne prendrait aucune part au scrutin, ou bien elle y serait conduite par ses maîtres comme un bétail aveugle.”*³

In addition to poor attendance by the working classes, participation from the royalist countryside was lax too, to some extent due to deliberate obstruction by the Legitimists.⁴ Thus, participation rates demonstrated a downward trend within a few months, from 83.6% in April 1848 to 75.1% and 68.1% in December 1848 and May 1849, respectively.⁵

¹ P.Tanchoux (2004), *Les procédures électorales en France : de la fin de l’Ancien Régime à la Première Guerre mondiale*, Paris: Comité des travaux historiques et scientifiques, p. 439

² *Avis aux électeurs de Paris*, 4 April 1848, cited in Tanchoux 2004, p. 439

³ Bulletin de la République (n.2), 15 mars 1848, cited in Rosanvallon 1992, p. 461-462

⁴ S.Kale (1997), “French Legitimists and the Politics of Abstention, 1830-70” in *French Historical Studies*, Vol. 20, No. 4 (Autumn 1997), pp. 665-701. For the abstention rates, see *Annuaire statistique de la France* (1878), Paris: Imprimerie nationale, p. 566; A.Lancelot (1968), *L’Abstentionnisme Électoral en France*, Paris: Colin, p. 14

⁵ . For the abstention rates, see *Annuaire statistique de la France* (1878), Paris: Imprimerie nationale, p. 566; A.Lancelot (1968), *L’Abstentionnisme Électoral en France*, Paris: Colin, p. 14

In reality, the conservatives were only tolerating universal suffrage out of necessity. As soon as it yielded unfavourable results with the electoral victory of two notable radicals in Paris, they chose to restrict suffrage again with the law of 31 May 1850. As a consequence, a number of by-elections that year were boycotted by the extreme left, skyrocketing abstention rates up to 40%⁶ and trimming the conservative majority in the National Assembly. These events only fuelled their ideological opposition to universal suffrage and their interest in regulating it.

In this context, the conservatives' advocacy of compulsory voting was part of their general effort to bend the electoral law to their own strategic benefit. A permanent aim was to ensure that rural voters, who formed their support base, would continue to undertake the long and tiresome journeys required to vote in the regional administrative centres. The full proposal also included plural voting, voting from home and campaign restrictions, as well as an absolute majority requirement for elections to make sure that "*la division des partis honnêtes ne donne la victoire à la Montagne*".⁷ Other ideas, discussed in May 1850, were the old Legitimist plans for two-degree suffrage or voting in the communes. The central aim was to provide an effective response to the unity and will demonstrated by the radicals and to secure more votes for the royalists.

The option of compulsory voting was mentioned in the National Assembly three times from 1848 till 1850. It was first suggested by deputy Etienne during the constitutional reform, on 28 September 1848.⁸ This discussion was postponed for some months, however, until the electoral law debates. Since abolition of universal suffrage was prohibited by the Constitution, an advisory committee was created to discuss possible amendments only.

Hence, in the session of 27 February 1849, the idea was brought up again, by deputy de De L'espinaſse. He proposed registered voters who neglected or refused to vote without legitimate warrant be fined 1 to 5 francs, or 5 to 15 francs in the case of a

⁶ Kahan 2003, p. 102

⁷ *L'Assemblée Nationale*, 22 janvier 1850, cited in R.Huard (1991), *Le Suffrage Universel en France 1848-1946*, Paris: Aubier, p. 53

⁸ *Moniteur Universel* 1848, p. 2633

repeat violation. A second option was to calculate the fines according to the voter's income. In his speech, De L'espinaſſe argued that the vote was a mandate to accomplish, a duty not a right.⁹ However, he suggested that the law should oblige only the presence of the voter, not the content of the vote. As a result, the voter would retain the liberty to cancel or invalidate his vote. This emphasis on the presence rather than the vote itself made the bill look less strict and concealed its partisan motivation. De L'espinaſſe suggested as an alternative that an election could be invalidated if at least one fourth of the registered voters failed to show up and unless the winner achieved a simple majority of those who did show up.¹⁰ This participation requirement aimed at reducing the vote-drain of the conservatives and offering them some electoral aid.

Although De L'espinaſſe's bill on compulsory voting was supported by several members of the Right, it was rejected mainly on technical grounds. How would the administration manage the collection of so many fines? De L'espinaſſe had suggested a five-step system: establishing the names of abstainers, sending the list to the General Prosecutor, pronouncement of the fines by the cantonal magistrates, consideration of the validity of the excuses and, finally, collecting the fines. But, according to the committee, this system would encounter numerous problems.¹¹ First of all, there were millions of abstaining voters, which would require thousands of administrative acts. Secondly, difficult decisions had to be made, such as how to force people who refused to pay and whether to remove them from the electoral rolls. This would be a violation of the principle of universal suffrage; hence compulsory voting was too precarious a solution for the political circumstances of the time.

After De L'espinaſſe's proposal was rejected for a second time, in 1850, the committee tried to find a third, less troublesome way of constraining universal suffrage. The discussions of the various options concluded that the best way to proceed was once more to make stricter the eligibility requirements for voters. But the

⁹ *Moniteur Universel* 1849, p. 659.

¹⁰ A similar measure was already in place by virtue of the Electoral Law of 15 March 1849: an election was invalid if less than one eighth had voted and the winner achieved a relative majority.

¹¹ 'Rapport fait au nom de la commission charge d'examiner le projet de loi qui a pour objet de modifier la loi électorale du 15 mars 1849 (18 mai 1850)' in L.Faucher (1867), *Vie parlementaire*, t.2, Paris: Amyot, p. 366

ensuing disenfranchisement of three million voters by the electoral law of 31 May 1850 caused a wave of rage by the democratic Left. Amid rising tensions, the Assembly belatedly tried to make concessions by extending suffrage. They were nonetheless caught up by the coup d'état in December 1851 by Louis Napoleon who, following an '*appel au peuple*', introduced universal suffrage by decree. However, he was soon proclaimed Emperor and severely undermined most of the democratic aspects of the regime.

P.J.Proudhon: abstention as veto-power (1863)

During the Second Empire, civil liberties were restricted, the parliament was stripped of its powers by the new Constitution and elections were seriously manipulated. The limited range of candidates to choose from and the overall antidemocratic climate not only hindered the parliamentary presence of the Left, but gave even the Legitimists good reasons to abstain. In fact, during the plebiscite of 1851 and the elections of 1852, abstentionism was only an informal recommendation, but after the 1852 plebiscite it became the strict policy of Chambord, the pretender to the throne who led the Legitimist party. For him, abstentionism was a strategic decision that made it possible to keep a distance from the dictator and repress the *ralliement* of Legitimist candidates on one hand, while on the other hand, it gave a green light to the Emperor to suppress the socialists.¹² Despite an official prohibition of encouraging voter abstention through promises, or through violence and threats,¹³ abstention in the elections organised under Louis Napoleon remained very high: in the referenda of 1851 and 1852 abstention rates were at 17.2% and 20.5%, and in the general elections of 1852 and 1857 they rose to around 36.7% and 35.5%, respectively.

In the days preceding the contest of 31 May 1863, while the abstention line of the Right was losing ground, the radical opposition called once more upon voters to

¹² Kale 1997, pp. 674-682

¹³ 2 Février 1852 Décret organique pour l'élection des Députés au Corps législatif, art.38-39, see M.Aubert (1863), *Le Carnet impérial. Memento des droits et des devoirs politiques. Extrait du "Casier des lois*, Paris, p. 14

boycott the upcoming elections. Pierre-Joseph Proudhon, in his late work *Les Démocrates assermentés*, published one month before the elections, openly urged abstention and the blank vote as a manifestation of political opposition. As a subtitle to *Les Démocrates*, Proudhon added *Non Possumus*, which referred to the historical refusal of Popes to attend meetings summoned by Kings and Emperors; *mutatis mutandis*, voters could not morally attend the elections called by the Emperor Louis Napoleon. For Proudhon, boycotting the election was a way to denounce the manipulation of suffrage by the government, which was done through a convoluted electoral system, abusive control of electoral operations and the lack of a truly independent press. In this context, he reformulated the notion of a duty to vote into a duty to shun the vote. Abstention, he explained, was a necessary recourse for citizens whenever they did not consider themselves sufficiently free or sufficiently informed, or when they rejected all of the given options. When the form, conditions and guarantees of universal suffrage did not genuinely conform to the principles of liberty, elections had the potential to be fraudulent, a form of violence and unconstitutional. Participation in such an election would only give false hope in reform and ultimately have a corrosive effect on political morals; hence, abstention was a voter's duty.

*“Elle [=l’abstention] devient obligatoire, elle est le premier et le plus saint des devoirs, lorsque la question soumise au vote est équivoque, insidieuse, inopportune, illégale, ou qu’elle sort de sa compétence; lorsque la tyrannie, fronçant le sourcil, s’introduit indûment dans le temple de la loi ; lorsque l’émeute grondant à la porte, ou l’éclair des baïonnettes fermant la discussion, font violence à la liberté du législateur.”*¹⁴

Proudhon's theory was based on his principle of non-violent resistance. Thus, he defined non-participation as a positive and constructive political behaviour that defends, rather than defies, law and justice. Contrary to the government's portrayal of abstention as sterile and aimless resistance, the refusal to participate in corrupt elections constituted *'un acte de conservation'*. It was a peaceful and perfectly legal means to defend lost liberties and constitutional guarantees, such as the freedoms of assembly, speech and press. In the absence of other legal possibilities to effectively

¹⁴ P.J.Proudhon (1863a), *Les démocrates assermentés et le réfractaires*, Paris: E.Dentu p. 23

express dissatisfaction, abstention was a legitimate way to move an authoritarian government, which among other things had absurdly required from citizens an oath of allegiance to the Emperor. In Proudhon's own words:

*“Ce n’est encore une fois ni une déclaration de guerre, ni une sécession, ni un défi; ce n’est point un acte hostile, pas même une protestation. C’est une représentation respectueuse, par laquelle le Pouvoir est informé de l’impuissance morale où le Peuple est de voter, et mis en demeure d’y pourvoir.”*¹⁵

Abstention was also neither a dereliction of duty in disguise nor tacit consent, but a sign of people's power. Proudhon claimed he was not preaching a quietistic retreat, but a new means of struggling for political existence and social autonomy. For, *“le moyen de vaincre l’arbitraire n’est pas de s’en faire, par une lutte intempestive, et contre soi-même, l’auxiliaire ; mais de laisser s’user dans sa propre action”*.¹⁶ In this sense, abstention could be a more effective tool of political intervention and a stronger form of activity than participation; it was *“l’action au suprême degré”*. By refusing to attend the polls, the country would declare to government that, under the present circumstances, the vote would acquire a new meaning: instead of being a sign of the support and trust of the people, it would become a threat to the legitimacy of government. Since even a dictatorship needed popular legitimation, massive abstention would ultimately force the government to resign or liberalise.

In Proudhon's view, boycotting elections was not only a tactical question of resistance against dictatorship, but part of his comprehensive ideology for the final victory of the working classes. His instructions to resist the political sirens of the parties can be seen as a confirmation of his distrust against the 'multitude', whom he believed were unintelligent, close-minded and capricious.¹⁷ Since the masses were the least democratic force by nature, bourgeois democracy was only a trick of the national

¹⁵ Ibid. p. 63

¹⁶ P.J.Proudhon (1863b), “Lettre à Monsieur Rouy, rédacteur en chef de “la Presse”, en faveur de l’abstention [du 29 mai 1863]” in M.L.Boutteville (ed.) (1870), *Oeuvres posthumes de P.J.Proudhon*, Paris: Librairie Internationale, pp. 243-261, p. 251

¹⁷ Proudhon 1863a, p. 92 ; For a discussion of his views on universal suffrage in 1848 see L.Spear (1975), “Pierre Joseph Proudhon and the Myth of Universal Suffrage” in *Canadian Journal of History*, Dec75, Vol. 10 Issue 3, pp. 295-306

leaders to prevent economic justice. What is more, universal suffrage was a cunning ruse by which the people were made to give up their sovereignty to the state and surrender their power to government. Thus, voting was a sign of weakness and complicity with the hypocritical bourgeois institutions; just as liberals refused to attend mass, workers should refuse to attend elections, *l'Église de la politique bourgeoise*.¹⁸

Conversely, abstention was an act of electoral intelligence that delegitimised the electoral process and worked like a type of veto. At the same time it preserved the autonomy of the working classes, consolidated their power in society and allowed them to develop their own character and capacities. Abstention was the only way to prevent tapping and allow representing the thought of the masses and claim autonomy for the working classes. Boycotting the ballot box would send a loud and clear message and help workers connect with each other and differentiate themselves from the masses.

Of course, to demonstrate that abstention was not the result of mere accident or neglect, Proudhon's conscious abstainers should register as voters and clearly explain in public the political reasons for their abstention.¹⁹ The declaration *Aux Électeurs démocrates*, which circulated on 17 May, was such a public justification of abstention. He also suggested creating abstention committees as a counterweight to the electoral committees that supported candidates, but soon dropped this idea. Two days before the election, Proudhon repeated his main position that refusal to choose between the candidates supported by the regime was a matter of being politically conscious and true to democratic principles. In a letter to the editor, he condemned the moderate press for refusing to publish statements by his 17-member abstentionist steering group.²⁰ Under the circumstances, the upcoming elections, he protested, were tantamount to an attempt to silence the real opposition.

¹⁸ P.J.Proudhon (1865), *De la capacité politique des classes ouvrières*, Paris: E.Dentu, p. 441

¹⁹ *Ibid.*, p. 66

²⁰ Proudhon 1863b, p. 247

On the other side, the moderate republicans of the so-called Legal Opposition organised an electoral movement that believed in overthrowing the Empire through massive participation in the elections. They were joined by those who supported a constitutional monarchy and condemned the electoral malpractices and the restriction of civil liberties by Louis Napoleon.²¹ In the *Manuel Electoral*, published few months before the elections by seven lawyers of the Paris bar, abstention was pejoratively described as passive and unproductive. “*Voter est pour chaque électeur un grand devoir à accomplir. L’abstention, quand elle a pour cause l’indifférence et l’égoïsme, est coupable; produite parfois par de plus nobles sentiments, elle est toujours stérile; l’expérience la condamne. Qui s’abstient s’annule*”.²²

Similarly, a number of moderate journals threw themselves into the pro-voting campaign. The *Siècle* even offered administrative help in registering voters.²³ As election day approached, a group of republican candidates published a statement that participation in the vote was the sole guarantee of liberty.²⁴ The director of *La Presse*, Emile de Girardin defended elections as necessary for exerting political influence. The individual act of voting, he said, was a way to give one’s evaluation –positive or negative– on the performance of governments. It was a political action, conferred by the law and the institutions, which everyone had to exercise seriously. Much more than casting a ballot, participating in elections presupposed a systematic political, social and intellectual engagement in society for the sake of the country.

*“Il faut étudier le pays, interroger ses vœux légitimes et s’en faire les fermes interprètes, se mêler avec les hommes, nouer des rapprochements, s’unir à la nation, se pénétrer de sa vie, de ses désirs, être toujours et partout les premiers à prendre en main les droits et les intérêts chers à la France.”*²⁵

On the other side, the failure to vote was a betrayal both of the country and of one’s own beliefs and interests. It was equivalent to abandoning the fight, interminably

²¹ J.Ferry (1863), *La lutte électorale en 1863*, Paris: E.Dentu

²² Cited in E.Delattre (1863), *Devoirs du Suffrage Universel*, Paris: Pagnerre, p. 73

²³ *Le Siècle*, 16 mars 1863, cited in T.Delord (1869-76), *Histoire du Second Empire 1848-1869*, t.3, Paris: Baillière, p. 394

²⁴ *La Presse*, 23 mai 1863

²⁵ *La Presse*, 28 mai 1863

speculating, waiting and procrastinating a desirable political change. Other metaphors included closing one's eyes to the difficulties, sleeping or disabling one's own arms.²⁶ Republican Jules Favre described neutrality as a demeaning and suicidal behaviour. “*Toute opinion est respectable, hors celle qui se suicide en abdiquant. S’abstenir, c’est se dégrader soi-même, c’est se proclamer indifférent au sort de son pays.*”²⁷

Thus, *abstentionnistes* were portrayed as intolerant fanatics, or sectarians and revolutionaries, who refused to recognise the lawfulness of the imperial regime. They were also accused of letting down the young generation, for whom action was a necessity, and of refusing to enter into dialogue, which had always been a primary source of new ideas and political change.²⁸ Finally, abstention was an outdated principle, justifiable only in the context of the *ancien régime*, when elections were unjust and voting was a privilege rather than a right, a situation very far from the free and equal society of the present day. With these arguments, moderates tried to urge the masses to go to the polls and stage an ‘electoral’ coup d’état against the Emperor.²⁹

In this context, the idea of voting duty was rehabilitated as a religious principle and a matter of social justice. For example, Girardin drew parallels between religious and political loyalty, hoping to attract Catholic liberals into the pro-voting movement. Christian believers, he argued, owed to the state a similar moral duty as to God. Or, from Delattre’s point of view, voting was the primary social obligation that needs to be met in order to guarantee a just society. In exchange for enjoying a public system of justice and the defence of individual rights, every voter had to exercise his mandate. Voting was “*un acte de justice préparatoire*” that corresponded to jury duty.³⁰ As jury members were subject to fines in the case of absence from court hearings, punishing non-voters was also seen as a desirable development in the future.

²⁶ Ibid.

²⁷ *La Presse*, 27 mai 1863

²⁸ Delattre 1863, pp. 76, 80-81

²⁹ For Delattre’s immersion in the Masonic dissidence of the 1860s and 1870s, see P.Nord (1995), *The Republican Moment: Struggles for Democracy in Nineteenth-Century France*, Harvard: Harvard University Press, p. 21

³⁰ Delattre 1863, pp. 71-72

Hence, the anti-abstention movement in 1863 kept the interest in compulsory voting alive.

For the moment however, a middle ground was found in the form of the blank vote. Indeed, recognising the radical nature of abstention, its advocates directed their attention to the so-called ‘silent’ vote. Even Proudhon acknowledged that the blank vote was a legitimate type of political action, as valuable as abstention. Two years later, he defended it as a:

*“déclaration d’absolue incompatibilité entre un système suranné et nos aspirations les plus chères”; ce stoïque veto [...] lancé par nous contre les présomptueuses candidatures, n’était rien de moins que l’annonce d’un nouvel ordre de choses, la prise de possession de nous-mêmes comme parti du droit et de la liberté, l’acte solennel de notre entrée dans la vie politique, et, si j’ose le dire, la signification au vieux monde de sa prochaine et inévitable déchéance...”*³¹

The rationale was the same as with abstention, to engage in a *negative* manifestation of the workers’ ideas and interests. Yet, unlike abstention, the blank ballot gave them the opportunity to express their discontent towards the system and at the same time show that they valued their right to vote.³² In addition, it was held in high regard by the pro-voting opposition, who considered a high number of blank ballots less of an institutional distraction than a full boycott. Therefore, the blank ballot was recognised as valid and legal, a golden mean where the two sides of the political opposition found a compromise. As a result, the 1863 elections showed a slight rise in participation compared to previous years, with 72.9% of registered voters attending the polls.

The strategy of electoral participation was strengthened even more towards the end of the Second Empire, in the 1869 elections. The Comte de Falloux, an influential member of the Catholic Party, rejected the option of abstention, which he described as a voluntary internal displacement, *“émigration de l’intérieur”*. *“Refaire aujourd’hui*

³¹ Proudhon 1865, p. 8

³² *Ibid.* pp. 440-441

par l'abstention une émigration volontaire et factice, [...] ce serait affaiblir la résistance aux jours de la lutte et susciter de cruels embarras aux jours du succès."³³

In order to increase their power of resistance, it is necessary to launch it in an election contest. This view was based on a rational calculation that the choice of passive resistance could not bring any tangible results. Besides, from a moral point of view, idleness was seen as a vice. “*Non, l'abstention n'est pas une bonne gardienne de la vie privée, parce que le désœuvrement, même relatif, n'est pas un bon auxiliaire de la vertu.*”³⁴ Following these actions, voter turnout increased in the May 1869 elections to 78% — five per cent up from 1863. In this way, massive electoral participation in the 1860s played its own part in hastening the collapse of France's second imperial regime and the advent of the Third Republic.

Table 2. Electoral Abstention in France from 1848 to 1870

Date	Registered Voters	Abstaining Voters	Abstention %	Participation %
<i>Second Republic</i>				
23 April 1848 (Constituante)	8,220,664	1,353,592	16.5%	83.5%
10 December 1848 (presidential)	9,977,452	2,487,837	24.9%	75.1%
13 May 1849	9,936,064	3,170,973	31.9%	68.1%
20 December 1851 (referendum)	9,839,076	1,698,416	17.3%	82.7%
<i>Second Empire</i>				
29 February 1852	9,836,043	3,613,060	36.7%	63.3%
21 November 1852 (referendum)	9,977,632	2,055,146	20.6%	79.4%
21 June 1857	9,490,206	3,371,889	35.5%	64.5%
31 May 1863	10,004,028	2,713,858	27.1%	72.9%
23 May 1869	10,416,666	2,291,649	22.0%	78.0%
8 May 1870 (referendum)	10,535,008	1,881,828	17.9%	82.1%

Source: *Annuaire statistique de la France* 1878, p. 566

³³ Comte de Falloux (1869), *Les élections prochaines*, Paris : Douniol, pp. 12-13

³⁴ *Ibid.* p. 11

*“Un suffrage universel honnêtement pratiqué” (1871-77)*³⁵

With the advent of the French Third Republic came the abolition of old voting restrictions³⁶ and the consolidation of universal suffrage in principle and in practice. This is the time when introducing a legal obligation became a real option. Conservatives insisted on the traditional concept of voting function and supported instituting a legal obligation to vote. At the same time, republican deputies agreed that that would be a good solution against the ‘tyranny of minorities’, namely, radicals and socialists. Thus, calculation of party benefits went hand in hand with principled arguments about the nature of the vote.

The removal of financial and educational restrictions to voting in 1871 was not welcomed by all political groups. As in 1848, the monarchists were dreaming about a restoration of voting restrictions, but did not enjoy enough popular support outside the Assembly and were too divided amongst themselves (Legitimists, Orleanists and Bonapartists) to proceed with such deep changes. Their mandate was fragile, based on the promise to negotiate peace after the disastrous war against Prussia. Pressure from the republicans, who were making steady advances in the by-elections of 1871-1875, as well as from the workers in the streets of Paris, put additional constraints on their original intentions to diminish democratic institutions.

As universal suffrage seemed an irreversible fact, those who opposed it had to look for alternative routes to restrict suffrage. They pursued regulations that would limit the impact of universal suffrage, or tried to “*réglementer, moraliser, épurer*”.³⁷ In this context, the question of ‘who’ could vote, which had dominated political discourse for most of the nineteenth century, was being substituted by concerns about ‘how’ to vote. Thus, once a political issue, suffrage was becoming more of a question of

³⁵ Henri V, Manifesto of 5 July 1871, cited in Huard 1991, p. 108

³⁶ Of course, by ‘old’ restrictions, I mean those based on property, income, civil registration and education. As to the ‘new’ restrictions of gender, age and nationality, those remain in place well into the twentieth and twenty-first centuries.

³⁷ A.Thiers, Speech of 24 May 1873, *Ibid.*

technical procedures.³⁸ This change in focus, against a background of real political competition, created the conditions for substantive debates on the content of suffrage.

One of the main problems discussed in the early years of the Third Republic was low voter participation. According to the centre-right deputy marquis de Castellane, “*L’abstention a fait beaucoup plus de mal à la société que le suffrage universel [...] L’abstention! voilà la vraie plaie, le ver rongeur de la société*”.³⁹ Voter disappointment about the defeat by the Prussians and the handling of the Paris Commune uprising in spring 1871 provoked misgivings over past choices and a crisis of consciousness.⁴⁰ These were further exacerbated by ideological confusion and voter fatigue, which were normal in transition periods. Beaussire, a moderate republican who dreamt of a stronger political centre, also blamed dirty political campaigning and the refusal of parties to engage in broad coalitions; as a result, several candidates had only minimal chances to win and, in order to avoid the image of the loser, they themselves or their supporters chose to abstain. Indeed, according to Lefevre-Pontalis, during the partial elections from 1871 to 1874 the number of registered voters was 12.935.776, out of whom 4.959.606 abstained, that is, over one third of the voters.⁴¹

It was a widespread belief that abstainers came mainly from among the conservative ranks, as a protest against the introduction of universal suffrage. The abstention of “*la majorité honnête, modérée, intéressée à l’ordre*” created political gains for the “*minorités turbulentes ou factieuses*” of the radical left.⁴² The political effects of abstention were further highlighted by Adrien Bavalier in these terms:

“Cette abstention des citoyens est un fait coupable ; les meneurs ne manquent pas d’en profiter pour faire réussir les candidatures qu’ils patronnent, et ils sont d’autant

³⁸ P.Rosanvallon (1992), *Le Sacre du Citoyen*, Paris: Gallimard, p. 21

³⁹ De Castellane, marquis de (1872), *Essai sur l’organisation du suffrage universel en France*, Paris: E.Lachaud, pp. 65-67

⁴⁰ E.Beaussire (1872), “La Réforme Électorale et l’Abstention” in *Revue des Deux Mondes*, février 1872, pp. 658-676

⁴¹ A.Lefevre-Pontalis, Speech of 10 Nov. 1875

⁴² Beaussire 1872, p. 658

plus actifs qu'ils savent que la plupart des abstentions émanent d'ordinaire de gens paisibles qui n'obéissent pas à un mot d'ordre."⁴³

In fact, the number of contested seats in partial elections during the first years of the Third Republic and the abstention of conservatives reinforced the Republicans in the National Assembly. Having started with approximately 222 deputies or 32% of the Assembly in 1871, by December 1875 they were counting 356 members, or 49%. Hence, it was logical for the conservatives to be upset about the Republican advance, which they blamed on the high, almost 40%, abstention rates in the partial elections. Thus, besides constitutional concerns, the monarchist government had a very concrete political interest in preventing abstention.

Thus, the first bill on obligatory voting was submitted by two monarchist deputies, Tallon and Fournier, on 28 June 1871. According to their proposal, those who failed to attend the polls would lose the right to vote temporarily, for 3 to 24 months.⁴⁴ The bill received a favourable review by the electoral law commission, though opponents reacted by concentrating on the dangers posed for voting liberty. Its supporters argued that liberty would not be compromised, because the secrecy of the vote was sufficient to guarantee that the choice of candidates would be un-coerced. Thanks to secret voting, citizens were accountable only to their own conscience. Quite to the contrary, abstaining citizens could not hide from responsibility for a potential negative outcome of an election. Abstention was more open to manipulation than voting itself.

Yet, a legal obligation was not necessarily the best solution, according to Beaussire. In fact, the proposed reform was simply missing the point, he said; it applied the law excessively to a problem that was not about loose political ethics, but about the ideological confusion of voters.⁴⁵ Compulsory voting could not guarantee that those voters, who would otherwise avoid political engagement, would suddenly become enlightened as to how to vote. In contrast, voters forced to the polls against their will

⁴³ A. Bavelier (1874), *Essai historique sur le droit d'élection et sur les anciennes assemblées représentatives de la France*, Paris: Firmin-Didot, pp. 409-410

⁴⁴ *Journal Officiel*, annexe 360 (28 juin 1871), pp. 2111, 2137; Commission Report, annexe 392, p. 2669

⁴⁵ Beaussire 1872, p. 659

might simply vote randomly, choosing the first option on the list, or vote in vengeance against the government. In this case, the decrease of abstentions would only lead to more 'lost votes'. "*Qu'importe la quantité littérale des votes, si la qualité n'y gagne rien, si elle court même le risque de devenir plus mauvaise?*"⁴⁶ This acknowledgment showed among other things that electoral attendance was not desirable per se, if it did not come with a 'responsible' voting attitude. On a different reading, it also showed that the reformers were not interested in fostering inclusive participation unless it was to their own electoral advantage.

Instead of corrective measures, preventive action was much more welcome in Beaussire's mind. Such actions included the combination of direct and indirect suffrage, representation of minorities, plural voting, voting in the communes, and abolition of electoral rolls.⁴⁷ In addition, deputies could advocate for voter participation and set a good example by their own presence in parliamentary voting sessions. After all, a problem that related to realising the importance of voting was better solved by raising awareness than by reforming the voting act itself.

Nevertheless, universal and obligatory suffrage was seen as a duty parallel to universal and obligatory military service. The latter was necessary for defence against external enemies and the imposition of domestic order, but only in exceptional cases did it require an actual effort from the whole population. Voting duty was even more important than military service, for it affected decisions to enter into war in the first place. The critical importance of elections made participation in the polls a patriotic duty:

*"le suffrage populaire, quand il sert de base aux institutions d'un pays, met en jeu tous ses intérêts; des jugements qu'il est appelé à rendre dépend la paix ou la guerre, l'ordre ou le désordre, le salut ou la perte de la fortune publique et de fortunes privées".*⁴⁸

⁴⁶ Ibid., p. 669

⁴⁷ Huard 1991, pp. 111-113

⁴⁸ Beaussire 1872, p. 668

Voters who abstained were like soldiers in the battlefield who, by refusing to march forward, allowed their flanks to be attacked. Like deserting soldiers, not voting was a highly unpatriotic behaviour, an act of political betrayal. “*Ils livrent leur pays aux factieux, aux casse-cou politiques, qui savent se glisser partout, et permettent à des minorités souvent méprisables de devenir des majorités factices et de s’emparer du gouvernement*”.⁴⁹ Therefore, abstention was not a neutral position in the political spectrum, but gave support to the enemy, and for this the voter was answerable to society.

The marquis de Castellane indeed deemed that the radical fringe only made advances when the conservative forces were sleeping. Such laxness had allowed the Convention to come to power a century earlier and was now threatening the stability of their latest victory, that of 8 February 1871. Only full participation would prevent a future defeat of conservatives by radical zealots. Legal remedies were necessary, because the endemic apathy of the “*honnêtes*” and the disintegration of political parties made a voluntary turnout of voters very improbable. “*Les partis sont comme les individus, oublieux, insoucians, frappés un instant par l’évidence du danger, l’instant d’après, ils en perdent conscience*”.⁵⁰ It was both too idealistic and too risky to hope for a voluntary show-up of citizens at the polls.

Thus, a second bill on obligatory voting was submitted by Castellane, deputy of the centre-right, on 19 March 1872, including a detailed yet controversial plan of enforcement.⁵¹ Castellane proposed that voters who abstained should present themselves in front of the mayor and two municipal councillors within fifteen days to explain the reasons for their absence. Excused would be those who were sick, out of the commune on election day, had urgent matters or weather constraints. Castellane explained why he suggested the mayor and not the *juge de paix* be the judge to hear abstention excuses. He took into account not only the mayor’s independence from political interests, but also his easier availability and geographical proximity, keeping

⁴⁹ Castellane 1872, pp. 67-68

⁵⁰ Ibid.

⁵¹ *Journal Officiel*, annexe 1007 (19 mars 1872), p. 5381; Commission Report, annexe 1481, p. 7889; see also the session of 25 January 1873, p. 575

in mind that voters usually could not afford travelling to the regional centre where the courts sat.

For those found in breach of obligatory voting, Castellane proposed two levels of punishment corresponding to the two electoral rounds. Voters abstaining from the first round should have their names included on a list and be subject to three months of community service, redeemable by paying a fine (Article 28). In case of a run-off election in which voters again failed to show up and thereby prevented any candidate from collecting one eighth of the votes of registered voters, the whole electoral district should be suspended from voting for six months to one year (Article 33).

Castellane justified the first type of punishment, i.e. community service, as harder to bear and thus more effective for workers, city shopkeepers and rural people in general, who abstained the most. However, the second punishment, for low turnout, raised enough contradictions that Castellane himself was urged to reject it later.⁵² Punishing the constituency altogether was, after all, too arbitrary and indiscriminate, hurting the innocent political minorities who had voted, rather than those who had neglected to vote. Besides, it raised serious questions about the representativity and legitimacy of the members of parliament vis-à-vis the punished community. Collective punishment was less suitable and seemed unfair compared to holding each voter accountable for failing to exercise the right to vote.

A different mode of punishment was proposed the following month by Henri Wallon, a centre-right deputy for the Nord department, who became famous three years later for initiating an amendment that led to the compromise of the 1875 Constitution. Absent voters who did not present a valuable excuse to the *juge de paix* of the canton would have to pay a fine of 5 to 500 francs, which was progressive according to the level of personal tax contributions and equalled one tenth of them.⁵³ According to Wallon, the proportional sanction was justified by the uneven amount of protection granted by the state: those who had more wealth received more protection from the state and hence owed it more in exchange. Progressive sanctions were not only the

⁵² Castellane 1872, p. 78

⁵³ *Journal Officiel*, annexe 1076 (24 avril 1872), p. 2856

fastest and easiest way to prevent abstention generally, they also dealt with abstention by affluent citizens specifically. In addition, Wallon suggested public shaming of abstainers by displaying their names for one month at the entrance of the municipality hall. Finally, voters who abstained three times in a row would lose their right to vote and all other political rights for three years.

Another bill by Pradié, Wallon's fellow party member, suggested a flat rate for fines.⁵⁴ Its value was the equivalent of 10 days of community service and collected by either the commune or the canton. Having in mind different types of abstentions, Pradié suggested fining not only first-degree voters, but also local councillors, delegates of professional groups and second-degree electors. The general scope of application showed that obligatory voting was conceived not as a mere technical improvement of the voting procedure, but as a general and universal principle with firm ideological grounding.

Voting as a demonstration of party loyalty

Of course, the whole idea of a legal obligation drew on the doctrine of voting function, which was a sine qua non of conservative ideology. According to the Orleanist Duc de Broglie:

*“Le droit électoral n'est point un droit exclusivement personnel, l'un de ces droits de nature que l'État reconnaît sans les créer et qu'il garantit aux individus, en leur laissant la faculté d'en user ou de ne pas en user, voire même d'en abuser, selon leur bon plaisir ; c'est un droit social, un droit institué dans l'intérêt de la communauté; la communauté y doit avoir l'œil, et y tenir la main sous l'empire du suffrage universel.”*⁵⁵

⁵⁴ *Journal Officiel*, annexe 1769 (4 avril 1873), Bill on elections for a second Chamber, Art.4, p. 3226, 3260; *Journal Officiel*, annexe 1783 (20 mai 1873), Bill on municipalities and electoral law, Art.9-10, pp. 3944, 3978

⁵⁵ Duc De Broglie [Victor] (1870), *Vues sur le gouvernement de la France*, Paris: Michel Lévy, p. 38

Indeed, it was a longstanding belief that the exercise of the voting right was a duty to the community, the neglect of which would be harmful to other citizens. “*Le droit électoral n'a pas été introduit seulement au profit de celui qui l'exerce; il a été inventé pour le bien de la société tout entière.*”⁵⁶ Castellane’s metaphor aptly captures this spirit of solidarity: when a house is on fire, neighbours have no right to sit arms crossed and watch it burn; they should feel obliged to call for help. Similarly, an election could bring either “*la paix publique ou l'anarchie*”, violent takeovers, demagoguery or the collapse of society. In order to avoid such radical upshots from elections, voters should be held accountable for the outcome.

These views reflected the obsessive fear of the parliamentary Right against the consequences of universal suffrage. They were particularly upset by the landslide win of Barodet, a radical republican, in Paris on 28 April 1873, against Charles de Remusat, who was jointly supported by Orleanists and by moderate republicans. A modification of the electoral procedure would allow them to prevent similar losses, for they knew that criticising or challenging universal suffrage as such would lead nowhere.⁵⁷

Therefore, Castellane described abstention not as a failure to stand up to the exigencies of universal suffrage, but as a sign of indifference towards one’s political group.⁵⁸ He actually agreed on keeping universal suffrage, as a buffer against a new revolution. What is more, he argued that compulsory voting was a way to extend voting rights to more citizens. With this position, he was the first to establish obligation as not adversarial, but complementary to universal suffrage, “*un devoir corrélatif d'un droit*”.⁵⁹ At the same time, however, post-1848 developments had made several republicans have doubts about the appropriateness of universal suffrage. In fact, some were warming to the idea of limited suffrage. To the question “*qu'est-ce que le suffrage universel?*”, Louis Blanc answered “*c'est à la fois une fonction, un*

⁵⁶ Castellane 1872, p. 83

⁵⁷ Huard 1991, pp. 109-110

⁵⁸ Castellane 1872, p. 67

⁵⁹ H. Helbronner (1873), “Élection: Vote Obligatoire” in M. Block, *Dictionnaire Général de la Politique*, Tome 1, Paris: Lorenz, p. 798

droit et un devoir".⁶⁰ This political consensus about the double nature of suffrage — as right and function — thus became the basis of the French Third Republic.

These ideas were reflected in the debates of the Commission of the Thirty and the resulting Batbie report of March 1874. The new electoral law rehabilitated the idea of voting function, while maintaining the principle of universality. The abolition of the census may have portrayed voting as a human right in theory, but now the goal was “à épurer le suffrage universel et à rendre ses manifestations sincères”.⁶¹ The persistence in real political life of a number of restrictions on the right to vote, for example, on the grounds of mental disability, proved that voting was still a ‘difficult’ task.⁶² “Non-seulement c’est une fonction, mais il faut reconnaître que c’est une fonction difficile. On n’en pourrait pas citer une autre qui exige plus de tact et de sens, qui réclame à un plus haut degré de la mesure et de la fermeté”.⁶³ After a lengthy discussion, the Commission rejected re-introduction of the census, but decided on lengthening the residence requirements and adding a few bureaucratic hurdles, as well as other reforms, such as plural voting, two-degree indirect elections or interest representation.

Obligatory voting was an additional option mentioned in the Batbie report. In principle, it could be easily accepted as a simple application of the idea of voting function. Most importantly, it would serve the Right, who assumed that disinterested voters would adopt moderate political views if forced to express themselves. In Batbie’s own wording:

“Quelques membres voulaient ajouter à ces garanties l’obligation du vote sous peine d’amende et même d’un emprisonnement en cas de récidive ; ils avaient la confiance que les indifférents, si on les forçait à se prononcer, seraient acquis à la cause des opinions modérées. Le vote étant une fonction et la fonction impliquant le devoir de la

⁶⁰ L.Blanc, Session of 4 June 1874, *Annales de l’Assemblée Nationale*, t.31, p. 297

⁶¹ *Ibid.* p. 83

⁶² Rozy, however, argued that this was nothing more than a fallacy: voting restrictions were a consequence, not the justification, of the nature of suffrage. Rozy 1874, pp. 16-30

⁶³ A.Batbie (1874), *Rapport fait au nom de la commission chargée d’examiner les lois constitutionnelles sur le projet de loi électorale*, cited in H.Rozy (1874), *Le suffrage politique*, Paris: Le Chevalier, p.72

*remplir, nous aurions pu, sans violer aucun principe, mettre une sanction à son accomplissement. Nous avons été arrêtés par les difficultés pratiques.”*⁶⁴

Indeed, this reform was rejected on the pretence of technical difficulties. These included the difficulty to determine the validity of legitimate reasons for abstention or how to make sure that appointed judges would not be influenced by their own political interests and apply sanctions in a discriminatory manner. Yet, the most serious impediment was a tactical concern that, if forced to vote, indifferent voters would not support the conservatives, but rather the radicals.

*“La majorité aurait probablement voté l’obligation si les effets qu’on attend de la mesure lui eussent paru certains. Mais de récents exemples ont prouvé, dans les réélections après annulation que les indifférents ne se rangent pas toujours du côté des modérés.”*⁶⁵

In fact, the commission feared that, if prohibited from abstaining, citizens would actually react negatively and vote against “*ceux qui se font redouter*”. Because its benefits for the conservative party were so ambiguous, this option was taken out of the reform agenda. In any case, in the end, none of the proposed projects discussed in the Batbie report received a final approval.

Compulsory voting for senatorial electors (1875)

The rejection of obligatory voting for general elections did not inhibit the Commission from establishing a legal requirement for electors of the Senate to vote. Léopold Limayrac, centre-right deputy of Lot, submitted during the constitutional debates of February 1875 an amendment to make voting obligatory for elections for the Senate, with abstention punishable by a fine of 100 francs. It was accepted and so, according to the election law of 2 August 1875, Senate electors who were

⁶⁴ *Annales de l’Assemblée Nationale*, t.30, annexes, 21 mars 1874, p. 206

⁶⁵ *Ibid.*

illegitimately absent from the ballot were fined 50 francs by the *chef-lieu* civil court, which acted on behalf of the public prosecutor (Article 18).⁶⁶ If the Senate electors felt their absence was legitimate, they had the chance to present an excuse notice and send in a substitute elector. If they failed to do so or if the substitutes did not show up despite prior notification, the electors had to pay the same fine.

*“Tout délégué qui, sans cause légitime, n’aura pas pris part à tous les scrutins, ou, étant empêché, n’aura point averti le suppléant en temps utile, sera condamné à une amende de 50 francs, par le tribunal civil du chef-lieu, sur les réquisitions du ministère public. La même peine peut être appliquée au délégué suppléant qui, averti par lettre, dépêche télégraphique ou avis personnellement délivré en temps utile, n’aura pas pris part aux opérations électorales”.*⁶⁷

Other than this, Senatorial electors, who were elected as delegates of the communes — and their substitutes, were governed by the same rights and obligations as normal voters. The establishment of obligatory voting for them was justified on the grounds that, unlike voters in the direct elections for the National Assembly, communal delegates had voluntarily accepted their mandate as Senatorial electors and could therefore not neglect it. The general rule dictated: *“Un simple citoyen peut hésiter; un homme public, jamais: noblesse oblige”*.⁶⁸ Indeed, obligatory voting for Senatorial electors could not be compared to that for National Assembly voters. Second-degree electorship was a task, a political job, a noble duty that belonged only to some persons, whereas first-degree electorship was a birthright of the masses, including peasants, workers and others from the lower social strata. This difference betrayed an elitist principle of selection that recognised superior qualities for Senatorial as compared to National Assembly voters.

Therefore, Limayrac’s attempt to add compulsory voting to the law on the election of deputies of 30 November 1875 was immediately rejected, despite being almost identical to the senatorial clause: *“Le vote est obligatoire. Tout électeur qui, sans*

⁶⁶ A.Bard-P.Robiquet (1876), *La Constitution française de 1875*, Paris: Thorin, pp. 234-235

⁶⁷ Organic law of 2 August 1875, Article 18(1), cited in Coutant 1898, p. 158

⁶⁸ M.Block (1873), “Abstention” in *Dictionnaire Général de la Politique*, Tome 1, Paris: Lorenz, pp. 6-7

motif reconnu légitime, n'aura point pris part au scrutin sera puni d'une amende de 3 francs au moins et de 50 francs au plus, prononcée par le juge de paix". According to the rapporteur Ricard (centre-left), the Commission and the government were both opposed to the amendment. Suffrage, they argued, was a noble endeavour, easier for the Senate's distinguished membership to comprehend than for ordinary laymen.

In fact, the Senate provided an exclusive forum for more innovations of conservative inception. The same law that introduced obligatory voting had been also the first to provide strict punishment — by imprisonment of up to 2 years or a fine of up to 500 francs — for illegitimate influence or incitement to abstention (Article 19). Both clauses were consistent with the general idea of voting as a function. Moreover, the logic of restricted suffrage that applied to the Senate's Electoral College was a product of conservative ideology. The very conception of a Second House, introduced in the Constitution of 1875, was an idea and a consistent pursuit of the conservative majority, conceded to them in exchange for their having reduced their pressure against universal suffrage.

Voting as protection of national sovereignty (1877)

The rejection of Limayrac's proposal to extend obligatory voting from Senators to deputies did not eliminate the need to boost electoral participation among conservative voters. The struggle for votes becomes especially intense after the 16 May 1877 crisis and the dissolution of the young Republican parliament by Monarchist President Mac Mahon. In this context, both sides intensified their calls on voters to participate in the October 1877 elections. On the day of the elections, the daily newspaper *Le Petit Parisien* described the malady of abstention in these words: "*L'abstention est une défaillance sans excuse. Ne pas voter, quand on n'est frappé d'aucune incapacité légale, ce n'est pas négliger l'exercice d'un droit, c'est manquer à l'accomplissement d'un devoir*" (emphasis added).⁶⁹ And the author continues:

⁶⁹ *Le Petit Parisien*, 14 Oct 1877, n.363, p. 1

*“Celui qui ne vote pas n’oublie pas seulement ce qu’il doit à sa dignité personnelle, il manque à son premier devoir envers ses concitoyens. Par sa coupable abdication, il laisse vacante une part de la souveraineté nationale qui, pour jouir de toute sa puissance et de tout son prestige, doit être aussi complètement représentée que possible. Les rois fainéants furent la honte de la monarchie, les électeurs fainéants seraient la honte de la République.”*⁷⁰ (emphasis added)

In other words, voting is described as being not a simple right, but as the guarantee of national sovereignty. Hence, voters have a duty towards themselves as members of a sovereign nation, but also towards their fellow citizens, to safeguard the authority of the nation-state. Conversely, not voting is a ‘failure’ to fulfil this duty towards the Republic, similar to the failure of idle kings to perform their royal duties. The comparison of lazy voters to lazy kings underlined voting as a constituent function of state government, the voters in the sovereign taking the place of the sovereign in a monarchy. Here is also the first mention that this sovereignty must be represented in its entirety (*complètement*), in order to fulfil its constitutive role.⁷¹

Regardless of how popular the elections had become in the Third Republic, compared to during the Second Empire, and despite the general rejection of abstention as a valid way of doing politics, none of the proposals to make voting obligatory passed.⁷² The most pronounced reason for failure to pass was the difficulty of applying sanctions to a large number of people. Furthermore, the increase in prosecutions after each election would have sent the wrong message to citizens, bringing to mind memories of elections under the repressive Second Empire. The idea of punishing the holders of sovereignty for not exercising their right to vote contradicted the core meaning of universal suffrage and the general spirit of the Third Republic. It was too obvious an attempt to tamper with the unrestricted exercise of voting, which could not be accepted in the context of a regime that was only now starting to build up a relationship of trust with its citizens.

⁷⁰ Ibid.

⁷¹ This is a central argument in the Belgian debates and is discussed in Chapter 5.

⁷² Yet, the non-acceptance of obligatory voting was compensated by the existence of quorums in municipal and senatorial elections. R.Ségot (1906), *De l’abstention en matière électorale, principaux maux d’y remédier*. Thèse de doctorat, Université de Caen, Faculté de Droit, Germain et G. Grassin, p. 102

A tool for republican citizenship education (1880-85)

In the second decade of the Third Republic, four new bills and two accompanying reports on compulsory voting were submitted. Two of the bills came again from the conservatives, while the other two were, for the first time, submitted by republican and radical left deputies. Besides strategic considerations, republicans were indeed starting to recognise the normative value of the principle. In fact, obligatory voting was in theory compatible with the concept of citizenship advocated by Kantian republicans. The philosophical foundations of the Third Republic, laid by Renouvier and Barni, described a ‘moral democracy’ based on civic virtue.⁷³ Citizens had rights as well as duties, while the law was designed in the interests of all. Of course, civil liberties had a fundamental role in the Republic, yet liberty as such was not unlimited and citizenship entailed responsibility. An obligation to make educated judgments on public affairs was consistent with the official ideology of the Third Republic.

To some extent, the republicans’ support for obligatory suffrage was also linked to their growing sympathy for conservative ideas, including restricted suffrage. Whereas the first decade of the Third Republic was a period when the republicans invested all of their efforts in consolidating universal suffrage, they, after taking charge in 1877, started to seriously reflect on its shortcomings. In particular, after the 1870s, they shift their support to an ideological reconciliation between the doctrines of *function* and *right*. On one hand, under the influence of Émile Littré, they accepted the positivist belief in the supremacy of reason, from which it followed that capacity is the possession of only a limited number of people. On the other hand, Gambetta insisted that universal suffrage was synonymous with the Republic, because it expressed the legitimacy of popular sovereignty against monarchy. Their goal was now “*reconcilier la supériorité numérique avec la supériorité intellectuelle*”,⁷⁴ that is, to combine the belief in the universal right to vote with the ideal of intellectual capacity.

⁷³ J.Jennings (2006), “Two philosophers of the French Republic: Charles Renouvier and Jules Barni” in J.Jennings and I.Honohan (eds.), *Republicanism in theory and practice*, London: Routledge, pp. 53-66

⁷⁴ A.Fouillée (1884), “La philosophie du suffrage universel”, *Revue des Deux Mondes*, pp. 103-129

The memory of their electoral defeat in 1849 made them put the blame on universal suffrage, or not on the institution itself, but rather the ‘immaturity of the people’. Indeed, they considered rural people ignorant and easily manipulated by the aristocrats, while urban workers tended to abstain even from voter registration. The only action that could help them through this impasse was the goal of educating the people in democracy. Thus, the core of this “*ferveur démopédique*”, which begins in the 1880s and lasts for over twenty years, is to create citizens who are conscious of their rights and duties.⁷⁵

Bardoux: Voting as a duty of judgment and reflection

In this context, it is not by accident that the idea to make voting obligatory comes from a republican ex-Minister of Public Instruction. On 13 July 1880, Joseph Bardoux brought it forward under Article 3 of his motion to change the voting procedure. At the heart of the bill’s justifications was the idea that citizens had a duty to make informed political judgments. It was a duty that emanated from the right to vote. Every citizen had the capacity to make such judgments and, as a consequence, the citizens were obliged to make use of this capacity.

*“Le droit de vote, sous l’empire du suffrage universel, a pour corrélatif le devoir de voter. L’électorat n’est plus un privilège ; il participe à la nature de l’institution du jury. Chaque citoyen français, quand la période électorale est ouverte, est appelé, en désignant tel ou tel candidat, à donner son avis sur la politique générale, sur la direction à lui imprimer. Chaque électeur est, pour ainsi dire, appelé à juger le député à qui il a déjà donné un mandat. Le lui continuera-t-il ? ou bien désignera-t-il d’autres mandataires?”*⁷⁶ (emphasis added)

⁷⁵ The idea of democratic education in the Third Republic is best described in Rosanvallon 1992, pp. 468-505

⁷⁶ J.Bardoux, *Journal Officiel*, annexe 2950 (13 juillet 1880), pp. 10940-10941; Commission Report, annexe 3043, p. 12073. See also E.Pierre, *Traite de droit politique, électoral et parlementaire*, Paris 1893, p. 232

This call to the voter to participate was a matter of political education. On one hand, the citizen had to start thinking politically. By selecting a candidate, he expressed his opinion on the political future of the country and took on his share of the responsibility for self-government. On the other hand, the country needed such a universal engagement of its citizens in order to establish itself as a democratic and independent nation.

“Sur tous ces points, l’indifférence n’est plus permise. La démocratie en se développant, en prenant de plus en plus possession du pays, doit créer de plus grandes responsabilités. Il faut que la France sache bien qu’elle a le Gouvernement qu’elle veut. Il sera d’autant plus forte que, dans le plus petit village, chaque Français aura sinon réfléchi, du moins aura été appelé à réfléchir. Quant à éclairer le suffrage universel, jusque dans ses dernières profondeurs, c’est l’affaire des candidats et d’une presse convaincue et libre. Sans doute, ce n’est pas en un jour que se fait l’éducation politique d’une nation qui a la noble ambition de ne dépendre que d’elle-même ; mais encore faut-il commencer cette œuvre. C’est un honneur que de s’y consacrer”⁷⁷ (emphasis added)

The duty to vote resulted from the citizens’ acknowledgement that the state recognized their intellectual capacity to vote. Conversely, not using this capacity signalled that one was not worth being granted such recognition. As a result, the punishment for repeated abstention was a suspension of voting and other political rights for one or more elections. Bardoux described this as a fair agreement that did not harm anybody. Voters were required to vote, yet their freedom of conscience was maintained by the option of blank ballots, which were valuable as an expression of a, in Bardoux’s opinion, (neutral) political opinion.

“Qu’importe qu’aucun des candidats ne convienne à l’électeur ; mettre dans l’urne un bulletin blanc, c’est voter. La conscience de chacun est donc absolument respectée. La liberté ne reçoit pas d’atteinte”⁷⁸.

⁷⁷ Bardoux, p. 19040

⁷⁸ Ibid.

However, obligatory voting was only a minor innovation in Bardoux's bill. The main point was namely to replace the uninominal *scrutin d'arrondissement* with a *scrutin de liste* that applied to large constituencies. According to Gambetta, who was supporting the bill, this reform would offer a fair distribution of seats with regard to the number of registered voters, as well as a plurality of candidates compared to the old system of smaller constituencies. In reality, republicans were in a favourable position in larger constituencies compared to the small *arrondissements*, hence the enlargement of districts would have created an electoral advantage for them. Likewise, the supposition that abstainers held moderate beliefs fuelled hopes that a legal obligation to vote would increase the republicans' share of votes.

In fact, the *scrutin de liste* question was a harbinger of the debates to come on proportional representation, which often went hand-in-hand with compulsory voting. Both principles, proportionality and obligation, were an effort to control the dreaded political extremes. Those among the republicans who supported the reform were driven by an urge to confront the radical anarchists on one side and the absolute monarchists on the other in order to ensure a future electoral victory. So, with Gambetta's active support, Bardoux's bill was adopted in 1880, only to be defeated later in the Senate.

Grandjean: Voting as the moral anchor of society

Yet, as the problem of abstention persisted, proposals to make voting obligatory continued to receive support. The republicans managed to win the August 1881 elections, but with an increase of abstention to 31.4%, while municipal elections in the same year did not present a better picture. Thus, an effort to convince the Senate soon followed. In April 1883, a special motion by citizen J. Grandjean highlighted the moral risks of abstention. In an appeal to republicans, the petition argued that since the Republic was founded on universal suffrage, then "*les minorités inscrites, devenant majorités votantes*" caused the "*désegregation du principe républicain*".⁷⁹

⁷⁹ J. Grandjean (1883), *Du Vote Obligatoire*, Paris, avril 1883, pp. 1-12

The petition warned above all against the lack of voting consciousness and the violence of minorities i.e. the radicals and the socialists. For example, the abstention of three million voters in the election of 1881 had had detrimental effects on the moral fabric of society, according to the petition, and even affected its general security, including the rates of suicide and criminality. Thus, citizens had to be legally summoned to vote in the name of patriotism, solidarity and the collective spirit.

From a strict legal point of view, the petition continued, abstention undermined both the right and the duty to vote. Firstly, no *sui generis* right (to abstain) against another right (to vote) could be ever established, as it would be a logical paradox. Secondly, given that voting was generally acknowledged as a moral duty, noncompliance automatically justified corrective punishment. The second proposition implied a direct identification of morality with law, assuming that all moral imperatives should be made into legal statutes.

According to the proposed annex to Grandjean's bill, voters would have to pay 20 francs and see their names posted in their municipalities if they did not show up at the polls. The punishment of publicising names of offenders, which had appeared also in earlier bills, shows that abstention was considered to be first and foremost a violation of the ethics of voting. The public shaming of people who refused to vote was based on the belief that abstention was an act of immoral behaviour and unacceptable to the general public. A second innovation of this bill was the introduction of proxy voting. In order to facilitate voting procedures, voters who could not reach the polling stations in person could delegate their vote to another person. This technical facilitation of voting was justified as a complementary measure to the legal obligation and probably aimed at alleviating the travel hardships faced by of poor voters. Despite the bill's republican reasoning, it received no follow-up in the Senate.

Laroche-Joubert: Obligation with voluntary voter registration

The thorny problem of abstention also concerned the monarchists. In May 1882, the Bonapartist Laroche-Joubert argued in favour of forcing voters to the polls.⁸⁰ Voters who abstained without presenting a valid excuse had to pay a fine equivalent to one tenth of the tax they paid on their liquid assets during the previous year and in no case less than two francs.

His rationale was that it was impossible to know the political sentiments of the majority when one third of the population did not express their preference in the elections. This led parties to arbitrarily assume that they had the consent of non-voters, while the causes of abstention and especially the political affiliation of abstainers remained largely unknown to everybody. He believed that most abstentions were not politically motivated, but attributable to the indifference of the citizens. Abstention was an individual phenomenon and no more part of a strategy of election boycott, as had been common in the past.

For the same reason, it would make no sense to attempt to rally citizens who seemed to lack political opinions. Therefore, the bill specified that joining the ranks of registered voters should remain optional, and only registered voters should be obliged to vote. The backbone of this arrangement was individual consent: voters, who had the option of erasing their names from the electoral rolls, but decided not to must accept the obligation to exercise the right they were registered for. Only from this point on did voting become a pressing duty, “*un devoir impérieux*”. In this sense, the law was balanced: it recognised the obligatory character of voting, but still refrained from putting pressure on citizens who were neither interested nor proficient in public affairs. In other words, it engaged citizens who had political preferences and left alone those who, out of indifference, would tolerate almost any candidate or opinion.

This conservative proposal was immediately rejected by a commission dominated by republican deputies.⁸¹ They raised four main concerns against such a system of voluntary registration. First, it would have given the possibility to voters to influence the composition of the electoral rolls by manipulating the registration procedures.

⁸⁰ J.E.Laroche-Joubert, *Journal Officiel*, annexe 769 (2 mai 1882), p. 1132

⁸¹ V.J.D. Cirier, Commission Report, annexe 859 (22 mai 1882), pp. 1451-1452

Second, it would have created a category of non-registered potential voters, at whom candidates would focus their attention and energy. Third, the possibility to cast a blank ballot would have rendered any effort to make voting obligatory void of meaning. Finally, the need for quick post-election reconciliations would lead polling station officials to consider the excuses of abstainers without due examination.

In addition to these technical points, the main ideological criticism was that the bill was a realisation of the conservative doctrine of political capacity in that it created in effect a distinction between interested and disinterested voters. The republicans were put off by the thought that only those citizens who were motivated to vote would be fully included in the voting process, while non-practicing or discouraged voters would be given an easier possibility to make a political exit. The last category would probably have included their supporters, since the long republican ascendancy to power had created considerable voter fatigue. In other words, the bill was rejected by a republican commission for offering too much potential for procedural abuse and political discrimination.

Adolph Pieyre: Voting as a matter of high public interest

The next monarchist effort to make voting obligatory came in March 1885 with a well-argued proposal by Adolphe Pieyre, a deputy of the *Union des Droites*.⁸² Pieyre accepted the idea that “*le vote obligatoire était le corollaire indispensable du suffrage universel*”. Conversely, abstention caused uncertainty about the will of the nation, shook the foundations of public authorities and reduced their power. “*N’y a-t-il pas, d’ailleurs, un intérêt public d’ordre supérieur à connaître le sentiment d’une grande nation sur la manière dont elle entend être représentée [?]*”. Public opinion should be expressed “*complètement*”, not to advantage some party, as Pieyre argued, but for the common benefit. With this point, he was responding to accusations that the call to enlist all eligible voters was nothing more than a plebiscite in disguise for the benefit of the conservatives.

⁸² A.Pieyre, *Journal Officiel*, annexe 3643 (24 mars 1885), pp. 433-434

In line with the previous monarchist bill, voters would not be free to decide whether or not to exercise their constitutional rights, but they would be free to accept or refuse being a registered voter. Once accepted, they should bear the obligations that came with it for the sake of public interest, just as they accepted to pay taxes, serve in the military or serve on jury duty. As a result, the radical minorities would stop abusing the political process, small pluralities would disappear, and blank votes and run-off elections would become rarer. Electoral contests would regain their dignity and cease to be considered a tiresome and irritating process for voters. In other words, punishing abstention would be a perfect way to consolidate electoral democracy in France.

However, Pieyre's proposal was examined and rejected by a radical republican commission. Desmons' report did not cite technical obstacles, which Pieyre had already dismissed in advance as a pretext for invalidating the project. Despite acknowledging the legitimacy of Pieyre's concern about excessive abstention and the merits of the proposed solution, the commission concluded "*que le vote obligatoire serait une atteinte grave portée à la liberté du citoyen*".⁸³ They added that voting was a right, the exercise of which could not be imposed on anybody, unlike tax payments, which were clearly a universal obligation. Thus, as part of their effort to hold at bay this conservative regulation, the republicans embraced a very individualist concept of the right to vote. Involving much more than the state or other individuals, the republican concept of voting as a right had to do with the voter himself.

Paul Laffitte: Obligation as an expression of republican organicism (1888)

Liberty was not a problematic issue for Jean Paul Laffitte, a moderate republican, who argued for obligatory voting in his *Le suffrage universel et le régime parlementaire* published in 1888. Six years later, he elaborated these ideas again in *Lettres d'un Parlementaire*, which included a collection of articles that appeared in the *Revue Bleue*. Laffitte thought that the real meaning of electoral liberty was the absence of

⁸³ F.Desmons, Commission Report, annexe 3940 (2 juillet 1885), pp. 1218-1219

any active pressure on individuals, the reassurance offered by secret ballots, the transparency of electoral procedures and respect for the laws.⁸⁴ In other words, free voting was a matter of being able to express oneself without undue pressure and within a lawful electoral process. Under an obligatory-turnout clause, even a voter who disliked all of the candidates did not have to compromise, but had the option of casting a blank ballot. Liberty consisted of eliminating physical restrictions and external pressures, not of rejecting an acknowledged duty. Although voting was a constituent part of individual liberty, a voter was not free to get rid of this right.

Laffitte also discusses the legal nature of voting. He attacks the proposition that the right to vote belongs to the individual and is an absolute right, like the right to property. The latter is indeed determined solely by the individual, for example, one can sell, rent, exchange, donate, cultivate or desert a piece of land that one owns without hesitation.⁸⁵ But the right to vote cannot be treated in the same manner. “*Je suis tenu d’exercer mon droit personnellement, et tandis que je dispose de mes biens suivant mon intérêt privé, je dois voter suivant l’intérêt général ou ce que je crois tel*”.⁸⁶ Even though suffrage is an individual right, it is not a private right. It is not owned by the individual; hence, it cannot be sold without legal sanctions nor abnegated.

Political rights in general do not fall into the category of *jus utendi et abutendi*, but only that of *jus utendi*. In other words, whereas property was an absolute right, suffrage was the opposite, a relative right. The former could be used according to private interests, but the latter were used and distributed according to the public interest. Hence, the state could require the individual to exercise or renounce this right. Existing restrictions, such as those based on age, gender or domicile, illustrated this conditionality. In fact, suffrage, unlike property rights (which originated in a person’s physical effort and work and hence could stand alone), emerged from the relation of the citizen to the state and was therefore conditioned by the latter.

⁸⁴ P.Laffitte (1888), *Le suffrage universel et le régime parlementaire*, Paris: Hachette, p. 149

⁸⁵ Laffitte’s rationale echoes a famous quote by Mill that was repeated in the Belgian debate; see Chapter 5.

⁸⁶ Laffitte 1888, p. 145

Furthermore, the duty to vote comes automatically with the right to vote; they mutually entail each other. “*S’il n’y a pas de devoir sans droit, il n’y a pas de droit sans devoir*”.⁸⁷ If voters can claim the right to vote as a consequence of their duties towards the state, the state can similarly establish a duty to vote as a correlative of their right. Such a duty exists already for citizens in the form of jury duty and the parental responsibility for the tutelage of their dependents. As the law already enjoins and justifies these obligations, it can in the same spirit impose an obligation to vote as well.

The central logic behind obligation derived from Laffitte’s organic conception of the state. “*La société politique n’est pas seulement un agrégat d’individus: c’est un être collectif, qui a sa vie propre, son passé, ses traditions, ses lois*”.⁸⁸ He rejected the idea that political societies were simple gatherings of individuals, but argued that they were united “*par une idée commune, par un lien moral*”.⁸⁹ As a result, the public interest was not a mere sum of private interests. This belief had led to “*le despotisme du nombre*”, the erroneous assumption that the public interest is expressed by the will of the majority. If this was true, then the public interest would change according to the fluctuations of private wills, yet no one argue that this is the case.

For him, not only was the collective interest, “*le bien commun*”, something else than the interest of the majority, but in many occasions it was opposite to it. For example, he mentioned the opposition between the sum of the private interests of soldiers and the collective interest of the army: while the former always desire a reduced service, the army’s logic dictated a long and thorough military education. Political society is a united body marked by “*la diversité des organes et des fonctions*”.⁹⁰ Voters are seen as organs of the state and the act of voting as a function.

The organic view of suffrage was also advocated by other thinkers of the time. Alfred Fouillée, the most prominent philosopher of the Third Republic, recognised the multiple nature of suffrage, as an individual, social and national instrument of power.

⁸⁷ Ibid. p. 147

⁸⁸ Ibid. pp. 16-17

⁸⁹ Ibid. p. 14

⁹⁰ Ibid. p. 16

Most writers, he said, including economists, utilitarian philosophers and some proponents of political radicalism, recognise only the first dimension, which treats suffrage as a guarantee of individual liberty and property. But, according to Fouillée, suffrage also has a considerable impact on other people. “*L’individu n’a donc pas le droit d’aliéner dans l’état, au profit d’un autre, et sa liberté propre et la liberté de ses descendants*”.⁹¹ The exercise of voting becomes thus a matter of individual responsibility with regard to the preservation of present and future liberty, for oneself and for future generations.

Fouillée thought of this moral obligation to vote as coming also from the organic subordination of the individual to the state. The voter becomes “*au moment du vote, le représentant de la nation tout entière, qui, en lui confiant une charge, lui impose un devoir*”.⁹² The voter needs to exercise it just as an organ needs to function in order to support a living organism. “*Par le suffrage, pourrait-on dire, toutes les cellules du corps politique sont appelées à prendre leur part de la vie intellectuelle et volontaire, à devenir en quelque sorte des cellules conscientes et dirigeantes comme celles du cerveau.*”⁹³

The socialists and Emile Durkheim also believed that citizens were interdependent members of the political body and that voting was a function. All functions were “*unifiées et centralisées comme les fonctions animales correspondantes*”.⁹⁴ However, Durkheim insisted that social functions were strictly divided; each member had a special task and was not able to exercise other members’ tasks equally well. Individuals were destined to remain only small parts of society, unable to comprehend the whole of it and become its authorised ‘trustee’, as Fouillée had suggested. Hence, individuals were not capable of knowing what was best for society as a whole and of serving the general interest by voting.

⁹¹ A.Fouillée (1884a), “La philosophie du suffrage universel”, *La Revue des Deux Mondes*, tome LXV, p. 107

⁹² Ibid. p. 109

⁹³ A.Fouillée (1884b), “La propriété sociale et la démocratie”, Paris: Hachette, p. 168

⁹⁴ E.Durkheim, “Alfred Fouillée, La Propriété sociale et la démocratie”, *Revue philosophique*, XIX (1885), pp. 446-453

But, unlike this Durkheimian socialist variant, republican organicism made room for the individual to rise in society through education. Laffitte argued that the organic bond between the citizens and the state initially produced a certain ‘hierarchy of capacities’. By making suffrage universal, all citizens were called upon to express these capacities by taking a genuine interest in public affairs. Fouillée explicitly supports any state action that would remind citizens of their functional role in political society. The state had to make sure that voters received sufficient moral instruction in order to become ideal citizens for society.

“Toute la vie civile devrait aussi se résumer en inscriptions capables de frapper l'esprit populaire, et on ne devrait négliger aucun moyen de rappeler sans cesse au peuple ses obligations : combien y a-t-il d'électeurs qui comprennent que le suffrage n'est pas seulement l'exercice d'une liberté, mais l'exercice d'une autorité?”⁹⁵

Following Fouillée, Laffitte defended obligatory voting as a way to organise and rehabilitate universal suffrage. Originally opposed to the idea, he eventually adopted it, yet not from a natural-rights perspective.⁹⁶ The first advantage of universal suffrage, he wrote, is that people develop a sense of ownership of the laws and thus have more respect for the government and are more willing to uphold the public order. Secondly, universal suffrage itself is an instrument of public education:

“Pour la grande majorité des hommes, la vie tient tout entière dans les travaux et les devoirs professionnels; le but des leurs efforts et marqué par un intérêt d'individu ou de famille ; tout, dans leur tâche de chaque jour, les fait se replier sur eux-mêmes ; ils se meuvent dans un cercle étroit, dont ils sont le centre. Leur donner un rôle, quelque modeste qu'il soit, dans les affaires de la commune ou celles du pays, c'est les arracher à eux-mêmes.”⁹⁷

In other words, voting is a crucial instrument of political socialisation. It provides an opportunity to individuals to think in different terms than they do on an everyday

⁹⁵ Fouillée 1884b, p. 170

⁹⁶ M. Hauchecorne, *Le suffrage en questions: Une étude des débats autour du vote obligatoire (Australie, Belgique, États-Unis, France)*, Mémoire DEA, Institut d'Étude Politique de Paris 2004, p. 38

⁹⁷ Laffitte 1888 pp. 154-155

basis, to come out of their individualist mindsets and leave behind their identity as family beings. The right and obligation to participate in public affairs offers to individuals a chance to become conscious of their political role as members of a broader political community and offers them a new dimension of civic existence.⁹⁸ This formative role for suffrage represented an enthusiasm about democratic education in general, or *démopédie*, which blossomed in the 1880s and 1890s.

Finally, Laffitte's idea about the organic bond between the state and voters explains the type of punishment he proposes for abstainers: depriving them of political rights, but only after three warning notices and if no valid excuse is provided. He is against imposing a pecuniary punishment. The payment of fines, he says, does not seem to fit well with the spirit of a political law. In general, the penalties must be neither too soft, nor too strict, in order to urge compliance, but without intimidating voters.

The provisional or permanent suspension of the right to vote was for Laffitte fair punishment for those "*citoyens assez peu conscients de leur qualité de Français pour s'abstenir systématiquement*".⁹⁹ It indicated the close bond of responsibility that citizens owed the state. It was furthermore commensurate with the voters' own refusal to employ their electoral capacity, and thus it could not be logically challenged. A voter who did not vote indicated that he would like to distance himself from public affairs; erasing him from the electoral rolls simply confirmed what he himself had willed. "*Le pays n'a que faire de votants qui ne votent pas, de citoyens qui ne sont citoyens qu'à leur heure : à quoi sert de maintenir leurs noms sur les listes électorales, si ce n'est à fausser les statistiques ?*".¹⁰⁰ In this sense, active citizenship, or the exercise of voting rights, becomes a condition for holding on to one's political rights. The idea of obligation from then on grew automatically out of this republican activity conception of citizenship.

⁹⁸ In his 1918 *Wahlrecht* essay, Max Weber would describe voting as the exact opposite process, one that allows people to act as individual citizens, and not as they do on an everyday basis, i.e. as social or family beings.

⁹⁹ P. Delafutry (1888), *Les réformes économiques à la fin du XIX siècle*, Paris: Guillaumin, p. 78

¹⁰⁰ Laffitte 1888, p. 151

Laffitte's idea was criticised by opponents as too radical. In an article addressed to him, F. Sarcey doubted the effectiveness of removing abstainers from electoral lists, arguing that they couldn't care less. It is, he mocked, like denying cigarettes to somebody who doesn't smoke.¹⁰¹ Laffitte, however, insisted that citizens would try to hang on to, and would dislike the loss of, such an important civic right, as they most probably would like to have the option to exercise it at some point in the future. Sarcey then defended abstention in connection with the long journeys some voters had to make to reach their polling station, and also brought up the situation where a voter's choice was limited to candidates only from the far right or far left. Laffitte turned this point around, explaining that such situations are an argument for greater participation, since that would help moderate candidates get through to the second rounds.¹⁰² All in all, Laffitte builds his argumentation on the image of the republican citizen, who does not want to lose his voting right, but only needs to be reminded about his responsibility to the community.

Letellier: the Parliament as a 'mirror of the country' (1889)

Given Laffitte's ideological proximity to the moderate republicans, it is remarkable how quickly his idea spread to the agenda of the radical left. As a result, obligatory voting became the subject of a separate bill submitted in 1889 and 1893 by Alfred Letellier, radical left deputy for Algeria.¹⁰³ There, he repeats the view of voting as an exercise of national sovereignty at the fractional level assigned to the individual. Though smaller in scale, it is nevertheless comparable to the power of an absolute monarch, who cannot be excused from expressing his will when he governs. Therefore, universal suffrage is a "*noble institution pour la conquête de laquelle nos pères, nos devanciers, ont fait une révolution*". The non-voter "*trahit le premier de ses devoirs d'homme libre et commet une faute que la société doit punir*" (emphasis

¹⁰¹ P.Laffitte, *Lettres d'un Parlementaire*, Ollendorff: Paris 1894, p. 166

¹⁰² Ibid. pp. 163-164

¹⁰³ A.Letellier, *Journal Officiel*, annexe 3520 (7 février 1889), pp. 345-346 ; A.Letellier, *Journal Officiel*, annexe 2718 (2 mai 1893), pp. 825-827. It was also proposed by E.Delattre (Art.8) *Journal Officiel*, annexe 3530 (11 février 1889), p. 368 ; Commission Report, annexe 3579, pp. 607-608, and another by G.Laporte, *Journal Officiel*, annexe 127 (26 novembre 1885), p. 416

added).¹⁰⁴ It is assumed that the voter owes allegiance to the state, and therefore abstention is a betrayal of society and of oneself as a free being. In addition, it is morally wrong (*faute*), on account of all the struggles waged in the past to gain access to such a privilege (*noble institution*).

Furthermore, Letellier argues that the universal expression of the citizenry is fully realised and verisimilar only when participation is unanimous. Only then can it bring to power ‘true’ majorities and put them above small fractions, which would otherwise benefit from abstention. In other words, it prevents the distortion of electoral results, restores in practice the purpose of universal suffrage and diminishes party quarrels about the election outcomes. Run-offs, challenges and cancellation of results would no longer occur under this kind of regime. A truly universal suffrage would provide the government not only with authority, but also with energy and prestige. In contrast, when public opinion is not expressed in its entirety, the state may fall into corruption, tyranny and dictatorship. Saint Girons explains this in the following terms:

*“Le vote obligatoire deviendra l’un des moyens nécessaires pour réaliser la représentation exacte et proportionnelle du pays au Parlement. [...] Avec l’abstention, le gouvernement représentatif cesse d’être sincère et national [...] et a pour effet certain de fausser le gouvernement démocratique en donnant le pouvoir à ceux qui ne représentent pas la majorité. Le gouvernement ne sera réellement national que lorsque, le vote étant obligatoire et la représentation proportionnelle devenant possible, le Parlement sera le « miroir du pays », et non une reproduction incomplète et difforme dans laquelle le pays ne saurait se reconnaître.”*¹⁰⁵

In this context, ‘complete’ representation relates to the concept of descriptive or mimetic representation: the parliament must be a true copy of the people; its composition must faithfully reproduce all of the elements found in society.¹⁰⁶ However, Lettelier’s view does not put emphasis on reproducing the sociological variety of society in the Parliament, but to reproduce the variety of opinions or of the

¹⁰⁴ Letellier 1889, p. 345

¹⁰⁵ A.Saint-Girons (1885), *Manuel de Droit Constitutionnel*, Paris: Larose et Forcel p. 168

¹⁰⁶ Pitkin 1967, Ankersmit 2002 ; see also the relevant discussion in Belgium, Chapter 5

choices of all the citizens, without any assumptions as to a correspondence of political views to social class.

Letellier stresses the strategic implications of the reform, which was mentioned also in previous bills. The abstainers were hardly coming from the ranks of the radicals, who were considered to be very zealous voters. “*Pour celui-là, la politique est une passion. Il tient à son droit et l'exerce: ni le froid, ni le chaud, ni affaire, ni plaisir, rien, soyez-en sûr, ne l'empêchera de voter*”.¹⁰⁷ In contrast, those who stayed at home were most often well-off and educated citizens.

“*Ce sont précisément ceux qui, en raison de leur situation, de leur éducation et de leurs lumières, devraient donner l'exemple de l'assiduité aux scrutins, par cela même qu'ils ont la prétention d'appartenir aux classes dites dirigeantes, qui font le plus souvent preuve d'une complète indifférence*”.¹⁰⁸

What kept them from voting was either a lack of interest in public affairs, disillusionment about the minimal impact of their vote or sheer contempt for a right they had to share with the proletariat. Laffitte has strong words for them: “*si des hommes éclairés, avocats, médecins, propriétaires, commerçants, se montrent moins soucieux de leur devoir politique que le premier cabaretier venu, alors le suffrage universel vaut un hochet aux mains d'un enfant*”.¹⁰⁹ It was doubly disappointing to see educated and successful citizens abstain, since they should be the ones to set a good example for other citizens to follow.

But worst of all was that these “*hommes indépendants*” were in fact supporters of the moderate republicans. Laffitte estimated that they numbered around two million.¹¹⁰ Hence, the more pragmatic reason for preventing abstention was to change the balance of electoral power for the republicans' benefit. Letellier had additional reasons for concern. His constituency, Algeria, had become known for a notorious case where a general councillor of one of the biggest cities had managed to get elected

¹⁰⁷ P.Laffitte, Le vote obligatoire, *Revue Bleue*, t.LI, n.24 (17 juin 1893), pp. 742-743

¹⁰⁸ Letellier 1889, p. 345

¹⁰⁹ Laffitte 1893, p. 742

¹¹⁰ *Ibid.* p. 743

with only 40 votes out of 1000 registered voters. Letellier himself had been elected three times with a marginal majority and high abstention rates of at least 30 to 40 per cent.¹¹¹ Therefore, not by accident did he submit his bills just before elections, the first in February before the September 1889 election and the second in May before the August 1893 contest. Yet, precisely because his proposals were submitted so close to the end of legislative terms, they did not get any attention.

The bill included a very detailed system for the enforcement of obligatory voting. Electors had first of all the duty to verify their registration on the electoral rolls and obtain their identity cards. Come the day of elections, if they failed to present themselves at the polling station without a valid excuse, they were punished by ‘*affichage*’ (the public posting of their names on the municipality building) for a first abstention, 5 francs for a second and, for a third, 15 francs plus a temporary suspension from the electoral rolls. If a voter abstained more than three times, he was permanently removed from the rolls. This seemed to be a meet punishment for citizens who, out of neglect or ill will, ceased to be deserving of “*l’honneur du droit électoral*”.¹¹² A similar system of gradual punishments was envisioned for elected officials, too. Instead of losing their right to vote, if they abstained from assembly sessions, they would lose their public office. In the case of both ordinary voters and elected officials, offenders became ineligible to run for office for five years.

Contrary to Laffitte, Letellier proposed a multi-layered system of punishment that included both fines and the revocation of political rights, first temporary then permanent. Progressive sanctions and temporary revocation of voting rights were already known, but the idea of permanent disenfranchisement was new. Indeed, it was a very controversial point that many of his colleagues were not ready to accept. Thus, though Letellier's bill was resubmitted in the same year compulsory voting was introduced in Belgium, it failed to gain momentum.

¹¹¹ In 1881 he obtained 2606 of 5073 votes out of 9090 registered; in 1885 he won 7869 of 15,045 out of 22,153 registered; and in 1889 he received 3568 of 7786 votes out of 12,904 registered. See ‘Alfred Letellier’ in [Base de données des députés français depuis 1789](#), www.assemblee-nationale.fr

¹¹² A.Letellier, Commission Report, annexe 3909 (8 juillet 1889), p. 1352

Chapter 4: French parliamentary patriotism and compulsory voting, 1893-1940

The international context

The renewed interest in obligatory voting in the first half of the 1890s was generated by recent developments outside and inside France. The introduction of compulsory voting in Belgium during the electoral reform of 1893 was seen as a great breakthrough, of course, and French parliamentarians proposed following that example. John Stuart Mill had also supported the idea in Great Britain, while the publication of some articles on the subject in the US had made the debate truly international.

Attention was drawn especially to the Swiss cantons, particularly Zurich, where voting in the communes had been a legal obligation since the 1860s.¹ The combination of a very small fine (60 centimes to 1 franc) with other preventive means, such as proxy voting, a large number of polling stations, holding elections on Sundays and grouping several issues and contests into a single day of voting, were regarded as very successful. Other cantons had also introduced obligatory voting, St Gall already in 1835. As a result, obligatory voting was often thought of as being of Swiss origin and representing the civic-mindedness and exemplary democratic institutions of that country.²

Anti-voting polemics at the turn of the century

¹ L.Wuarin, "L'Évolution de la Démocratie en Suisse", *Revue des Deux Mondes*, t.160, 1 juillet 1891, pp. 630-654 (p. 641) ; "Recent Political Experiments in the Swiss Democracy", *Annals of the American Academy of Political and Social Science*, Vol. 6 (Nov 1895), pp. 1-20, p. 18

² S.Deploige, *Le vote obligatoire en Suisse*, Bruxelles 1893

Despite continuities with the obligatory voting debates of the 1870s, new developments came into play at the turn of the century. Supporters of obligatory voting were often firm advocates of participation and representation of the masses, since obligation was often presented as a complement of universal suffrage. Yet, in the late 1890s, democratic principles came under systematic attack by anarchist, revolutionary syndicalist and nationalist rhetoric. Contempt for elections and a subsequent idealisation of voting abstention became for these groups a principled strategy against the fallacies of electoral democracy.

Since the disagreement with Marx and their breakaway after the First International (1864), anarchists were advocating a rejection of state authority and encouraging individual action against every form of moral or material despotism. Their ideology differed from that of syndicalism, for example, in their refusal to accept organised labour syndicates and other corporations. Hence, they often operated in small autonomous groups that engaged in individual acts of violence. Their militant expression intensified in the mid-1890s with a series of bomb attacks and assassinations in the capital Paris.³ These were followed by a massive hunt by French police and the introduction of strict anti-terrorist laws.

Thus, French parliamentarians were fighting a concerted effort by the anarchists and their supporters to promote abstention as a general policy. For example, in a brochure of November 1890, the leading Italian anarchist Malatesta proclaimed: “*Au diable les élections et mettons-nous à l’œuvre!*”⁴ Similarly, the French writer and anarchist Octave Mirbeau advised voters to go fishing or play bowls on election-day.⁵ The anarchist anti-voting campaign was illustrated by the republication of Mirbeau’s famous article “*La grève des électeurs*” in the anarchist journal *Les temps nouveaux* in 1902 (no. 22), as well as a number of pro-abstention pamphlets issued by the *Bureau*

³ J.Maitron (1983), *Le Mouvement Anarchiste en France, t.I Des origines à 1914*, Paris : Fr.Maspero, p. 214

⁴ E.Malatesta (1921), *En période électorale*, Genève: Réveil, p. 16

⁵ *Le Figaro*, 14 juillet 1889, cited in J.Maitron (1992), *Histoire du Mouvement Anarchiste en France 1880-1914*, Paris: Gallimard, p. 132

Anti-Parlementaire in 1919 and 1924.⁶ In “*La grève des électeurs*”, Mirbeau wrote the anthem of abstention:

*“Les moutons vont à l’abattoir. Ils ne se disent rien, eux, et ils n’espèrent rien. Mais du moins ils ne votent pas pour le boucher qui les tuera, et pour le bourgeois qui les mangera. Plus bête que les bêtes, plus moutonnier que les moutons, l’électeur nomme son boucher et choisit son bourgeois. Il a fait des Révolutions pour conquérir ce droit. [...] Surtout, souviens-toi que l’homme qui sollicite tes suffrages est, de ce fait, un malhonnête homme, parce qu’en échange de la situation et de la fortune où tu le pousse, il te promet un tas de choses merveilleuses qu’il ne te donnera pas et qu’il n’est pas d’ailleurs, en son pouvoir de te donner. L’homme que tu élèves ne représente ni ta misère, ni tes aspirations, ni rien de toi; il ne représente que ses propres passions et ses propres intérêts, lesquels sont contraires aux tiens.”*⁷

Mirbeau’s critique of the political candidates and the electoral system resembles a general rejection of national representation. It was a continuation of the line of thought of Bakunin and others that suffrage was a disingenuous means of the bourgeois classes to win proletariat approval to promote their own interests. Thus, he concluded “*rentre chez toi, bonhomme, et fais la grève du suffrage universel*”.⁸ Parliamentarians were accused as a class of a number of vices, ineptitude, corruption, inconsistencies, irresponsibility, ineffectiveness and cowardice. The (rapid) succession of legislatures was a farce, ‘tragic and burlesque’ at the same time, played out at the expense of the worker-spectator. Universal suffrage was not only a lie, but a forceful means that anaesthetised human activity. A prevalent motto was ‘*Voter, c’est accepter la Servitude*’. Conversely, abstention constituted a form of resistance. It was justified as part of the quest for human liberty and through the belief that emancipation will only come through revolution.

⁶ S.Faure, “Électeur, Écoute”; “Pour ne pas voter”; G.M.Paraf-Javal, “L’absurdité de la politique”, *La Brochure mensuelle* (avril 1924), Paris : Groupe de propagande par la brochure, available at <http://kropot.free.fr/> Retrieved 22 Mar. 2011

⁷ O.Mirbeau, “La Grève des électeurs”, *Le Figaro*, 28 novembre 1888

⁸ Ibid.

Revolutionary syndicalists grew also out of a critique against electoral democracy. They were drawn together by a faction of socialists who split from the parliamentary branch, represented by Millerand and Jaurés, after the latter's ascension to the government in 1893. At the same time, as anarchists were being persecuted by the authorities, some of them became increasingly involved in anarcho-syndicalism. This was the case with Émile Pouget, a renowned former anarchist who had in the meantime flown to London. As the editor of *Le Père Peinard*, he condemned the conspiracy, organised fraud and deception involved in the elections in the strongest terms: “*les manigances électorales*”, “*les fumisteries votardes*”, “*la duperie du suffrage universel*”.⁹ Victor Griffuelhes and Georges Sorel were also very explicit in condemning the vices of parliamentary democracy.¹⁰

Lagardelle was even more critical of the deceptive forces of bourgeois democracy, described ironically as ‘democratism’. The parliamentary expression of socialism was also deplorable in that it reproduced an abstract form of political equality to the detriment of real i.e. material equality. Lagardelle and the revolutionary syndicalists believed that autonomous workers’ syndicates, as opposed to the traditional political parties, were the only organisations that could keep social class united in the struggle against the bourgeois establishment.¹¹ Aversion to elections was exemplified by attitudes towards the nomination of syndicate leaders. Representation was seen as a quality, not a procedure; it resulted from an essentialist identification of the leaders with a social vision rather than being simply the quantitative measurement of the workers’ opinions at a particular place and time.¹²

Syndicalists did not believe in the principle of majority rule. Quite the opposite, the masses were considered ignorant and needed to be educated before they could decide for themselves. “*Le terrain publique est d’une étendue trop vaste et les questions qui*

⁹ É. Pouget, “Contre le vote” (7 Aug. 1896) ; “Contre le suffrage universel” (24 Apr. 1898), *Le Père Peinard*.

¹⁰ P. Rosanvallon (1998), *Le peuple introuvable: Histoire de la représentation démocratique en France*, Paris : Gallimard, p.289 ; for the conceptual analysis of syndicalist anti-parliamentarism, see *ibid.* pp. 287-316

¹¹ T. Vaarakallio (2008), “The rhetoric of false appearances and true essences: Anti-democratic thought in France at the turn of the twentieth century” in E. Kofmel (ed.), *Anti-Democratic Thought*, Exeter: Imprint, pp. 67-84

¹² Rosanvallon 1998, pp. 295, 315

s’y agitent d’une complexité trop grande pour que la masse puisse être assez éduquée pour jouer utilement son rôle.”¹³ Since it was impossible to enlighten the masses, the most conscious and capable workers, a vanguard minority, had to take the lead and show the way forward to the passive majority. Legitimacy was not linked to the number, but to the quality, the *volonté*. Hence, ideologically the revolutionary syndicalists replaced elections with the principle of quasi-natural selection, echoing the reactionary critics of universal suffrage of the nineteenth century.

At the same time, they started to introduce the idea of obligation in their agenda. In order to strengthen representativeness, it was suggested that membership in labour syndicates become obligatory for all workers.¹⁴ Parliamentary socialists were also thinking about obligation, in particular, compulsory participation in strikes, in order to counterbalance their proposal of electing the syndicate’s leadership. Though none of these projects succeeds, they provide good example of how political forces were competing about legitimacy by engaging a large number of supporters. The idea of obligatory voting appears in this context as a counterweight proposal to the respective plans of the socialists and syndicalists.

Polemics against democracy was a principal strategy for the far left, as well as the far right. Charles Maurras represents the second trend with his integral nationalist and neo-royalist rhetoric. An heir to the counterrevolutionary tradition, he believed in a restoration of the grandeur of old France through national unity and a hereditary monarchy.¹⁵ Maurras argued that the elective system of government undermined the value of competence and was destroying the French nation. Maurras’ nationalist doctrine drew on a profound contempt for the masses: “*même indépendant, même probe, même intelligent, l’électeur sera toujours incompetent sur la plupart des sujets qui lui sont soumis. Cette incompetence le rend ou violent et aveugle, ou hésitant et versatile, souvent même ceci et cela tout à la fois.*”¹⁶ Logically enough, incompetent

¹³ H.Lagardelle (1902), « Socialisme ou Démocratie », *Le Mouvement Socialiste* n.94, 31 May, pp. 1009-1016

¹⁴ Rosanvallon 1998, p. 307

¹⁵ T.Vaarakallio (2004), “*Rotten to the core*”: *Variations of French nationalist anti-system rhetoric*. Diss. Jyväskylä: University of Jyväskylä, 2004, pp. 100-105

¹⁶ Ch.Maurras, “*Dictateur et Roi*” (1899), published in the journal *Action française*, 1 Aug. 1903, as well as in a re-edition of *Enquête sur la Monarchie*, Paris: Nouvelle Librairie Nationale 1925, pp. 446-463

voters elected hopeless representatives, who were then unsurprisingly involved in scandals and other catastrophic affairs. In addition, party interests had captured the state and were gradually supplanting the public interest.

Boulangist ambiguity

Another radicalist trend of the time that affected electoral politics, was the phenomenon of Boulangism. The French general Boulanger was a very controversial political figure, who manipulated the electoral system and caused a plebiscitarian sensation in the second half of the 1880s. Using a nationalist and populist rhetoric he managed to bring together monarchists, radicals and some socialists against the parliamentary republic.¹⁷ Then, exploiting the lack of an explicit prohibition, he submitted multiple candidatures in several partial elections from 1886 through 1889 and won several of them. Although the Boulangiste movement declined as rapidly as it grew, it successfully sowed the seeds of far right nationalism.

A connection between anarchist and Boulangist views on elections is illustrated by a pamphlet of Boulangist Paul Cassagnac, where he defends abstention with Mirbeau's motto "*la grève des électeurs*".¹⁸ To Cassagnac's mind, abstention is justified — at least for the 1895 election — by the voters' discontentment with the republican government. His main objection is that citizens are not given the opportunity to vote on the form of government or on the person they would like to put in charge. Therefore, for Cassagnac, elections of local councillors and national delegates are all too frequent and largely useless. As a true plebiscitarian, Cassagnac defends direct elections and referenda as the only type of election worthy of the name.

Yet, Cassagnac is in favour of voting duty and obligatory voting in principle. He only opposed it for opportunistic reasons, in reaction to a bill submitted few months earlier

¹⁷ Huard 1991, pp. 142-145

¹⁸ P.de Cassagnac, "Le vote obligatoire" (9 septembre 1895), *Questions Politiques et Sociales*, Articles de l'Autorité, Paris, p. 10

by republican Guillemet. In fact, in 1893 at the time of the Belgian reform¹⁹ and again in 1903, he took a rather supportive stand. Abstention, he argues, is “*un moyen tout aussi facile d’interrompre la vie du pays*”.²⁰ The refusal to vote can damage a country as much as the refusal to pay taxes or serve in the army. To avoid the dilemma of having to vote while disapproving of all candidates, there must be strict recognition of the value of blank ballots. This is the only type of “*manifestation, qui ne compromet ni n’engage personne*”. It does not impose burdens on the administrative continuity of a country, for which citizens ought to strive. Nevertheless, Cassagnac admitted that compulsory voting is one of those issues about which there have been and will always be long discussions, but never really any serious will to take active measures.

Other Boulangist deputies also came out in favour of obligatory voting. In January 1894, Gauthier de Clagny and three more Boulangist deputies submitted a bill to the National Assembly.²¹ Their ‘*exposé des motifs*’ underlines a concern over the ‘falsifying’ effects of abstention on electoral results, and in particular the formation of skewed majorities. In general, Boulangists were particularly unhappy with the existing political establishment and the corruption of the republican regime, which was manifested by a number of scandals.²²

As a result, apart from provisions for obligatory universal suffrage, the bill also included various tools for preventing electoral frauds. It established guarantees to stop recurrent fraudulent behaviour such as multiple voting, discriminatory voting prohibitions, omission from electoral rolls, biased election commissions, non-transparency of vote counting, obstruction of the validation of results and so on. Therefore, in addition to punishing abstention, as had been suggested earlier, with a combination of ‘*affichage*’, fines and suspension of suffrage, the bill established permanent voting cards and a detailed procedure for post-election complaints.

¹⁹ P.de Cassagnac, “Le Suffrage universel – La Réforme électorale” (22 avril 1893), *Questions Politiques et Sociales*, Articles de l’Autorité, Paris

²⁰ P.de Cassagnac, “Le vote obligatoire” (30 décembre 1903), *Questions Politiques et Sociales*, Articles de l’Autorité, Paris, p. 17

²¹ A.Gauthier de Clagny et al, *Journal Officiel*, annexe 230 (15 janvier 1894), pp. 14-16 ; See also *Eclair* of 12 Jan 1894

²² T.Vaarakallio, *Rotten to the Core: Variations of French Nationalist Anti-System Rhetoric*, PhD Dissertation, University of Jyväskylä 2004, p. 35

According to the report on the bill, the main issue was to safeguard the authority and power of elected governments.²³ The report's author, monarchist Gellibert de Seguins, drew attention to the danger of abandoning public power, as a result of growing abstention, to the hands of "*une minorité aggisante*". Besides, obligatory voting would be beneficial in economic terms. Not only would the fines paid by abstainers bring money to the public coffers, it would also save money by eliminating the need for run-off elections. Universal participation would make it possible to determine the winner of an election already in the first round.

But the report on Clagny's bill was presented at the beginning of a parliamentary session in which Clagny was not present, and so it received no attention. Even when a new bill was submitted about organising the electoral rolls in a way that would facilitate the prosecution of abstainers, the relevant committee failed to take it up for review.

Guillemet: Boosting civic-mindedness and patriotism

However, a new bill was soon submitted, this time from a deputy of the democratic left. Gaston Guillemet accuses abstainers in the strongest terms for "*fausser par son abstention ce qu'il y a de plus grave pour un pays démocratique et de plus précieux pour un gouvernement, c'est à dire la volonté du pays et l'Etat*". The consequence of not voting was to "*rester indifférent en présence des intérêts le plus sacrés, ceux de la patrie*".²⁴

Guillemet described civic-mindedness as an indispensable part of citizenship that should be taken into account before granting recognition of civic rights. This explains his proposal that electoral cards, or "*livrets de civisme*", should serve not only as personal records of electoral participation, but also as pieces of identity and passports.

²³ E.Gellibert des Seguins, Commission Report, annexe 692 (9 juin 1894), p. 910; Débats parlementaires (14 juin 1894), p. 1012

²⁴ G.Guillemet, *Journal Officiel*, annexe 1293 (9 avril 1895), pp. 366-367

For the rest, he suggested the same detailed system of punishment as in the two previous bills. But he added that the obligation should also apply to all those elected officials, who used to skip assembly meetings and thus “*tromper la confiance de ses mandants*”. For them, the three first abstentions should lead to a suspension of their mandate for three months, and three further abstentions to a permanent loss of their post. This obligation for these elected members was accepted in principle by the Gellibert report as a necessary application of the relevant law for senators to the members of the National Assembly.²⁵

The ensuing report by majority deputy Wignacourt tried to convince the Assembly of the indispensability of obligatory suffrage, as a natural counterpart to military conscription and compulsory education.²⁶ The establishment of compulsory, free and universal education in 1882 had also been justified as a complementary part of universal suffrage.²⁷ The report on obligatory suffrage was indeed discussed by the *commission d’initiative* on 11 June and by the Assembly on 13 June 1895. However, the reform did not pass and two more bills by Boulangists and monarchists soon after also tried in vain to gather momentum.²⁸

It seemed that many at the time believed that abstention was not worth worrying about. According to Weil, minuscule minorities winning over government seats, like the ones mentioned by supporters of obligatory voting, were isolated and extreme cases. In reality, citizens tended to show up to vote whenever the contest grew heated and the balance of powers closely divided.

“On a constaté que s'ils se désintéressaient du scrutin, ce n'était le plus souvent qu'aux jours où l'élection n'avait vraiment qu'un intérêt secondaire. Si, par exemple, ils montrent peu d'empressement lorsqu'il s'agit d'élections partielles dont le résultat

²⁵ Gellibert 1894, p. 910

²⁶ A. De Wignacourt, Commission Report, annexe 1365 (8 juin 1895), p. 751 ; Débats parlementaires (13 juin 1895), p. 1680

²⁷ P.Rosanvallon 1992, pp. 486-487

²⁸ A.Gauthier de Clagny et al, *Journal Officiel*, annexe 1416 (26 juin 1895), pp. 815-816 ; Débats parlementaires (26 juin 1895), p. 1869 ; L.Baudry d'Asson, *Journal Officiel*, annexe 1605 (11 novembre 1895), p. 1470

ne doit pas sensiblement modifier la balance des partis, ils se réveillent lorsqu'il s'agit d'élections générales où les destinées du pays sont en jeu."²⁹

For example, in 1848 when citizens were called to vote for a new regime, the rate of abstention was very low (16.4%). It was again low, under 20%, in the referenda of 1851 and 1870, where the contested subject matter motivated voters to turn out. Finally, despite elections having been held just the previous year, many citizens participated in the election of 1877, because of the 16 May political crisis and the preoccupation about the strength of the parliament over the presidency. In brief, abstention was interpreted as an anomaly that depended on the importance of the election: the higher the stakes of an election, the more certain it was that citizens would be interested and motivated to vote.

Benoist: Voting as an organic non-universal duty

Guillemet's bill was also opposed by Charles Benoist, who nevertheless favoured compulsory voting, but on different grounds. One of the main advocates of the conservative right, Benoist attracted much attention with his article on *La Crise de l'État moderne. De l'organisation du suffrage universel*.³⁰ His ideas about electoral reform were founded on a solid organic conception of the state, whereby "*dans l'État, comme dans la nature, l'atome qui reste atome est anarchique*".³¹ Still, Benoist supported neither the revocation of universal voting rights, nor the possibility of re-introducing plural voting.

His main fear was against the excessive power accumulated by electoral committees (i.e. parties), which were the de facto recruiters of voters and opposed to abstention. Their dangerous rise as controlling authorities could be prevented only by the political organisation of suffrage according to social realities. Together with Laffitte and

²⁹ G.D.Weil, *Les élections législatives depuis 1789 : histoire de la législation et des mœurs*, F.Alcan : Paris 1895, pp. 227-228

³⁰ Ch. Benoist, "La Crise de l'État moderne. De l'organisation du suffrage universel", *Revue des Deux Mondes*, Paris, mai-juin 1895.

³¹ *Ibid.*, p. 12

Duthoit, Benoist supported a corporate division of the electorate according to professional groups. Indeed, throughout the last decades of the nineteenth century, conservatives continued to think about ways of mending representative institutions in order to increase their own political power. Their political thinking represented a continuity with the past, and they only rejected ideas that had been proven unsuccessful by recent experience.³²

The most immediate changes that Benoist tried to foster was to increase education about universal suffrage, on the one hand, and to introduce obligatory voting, on the other. Voters had to be instructed on how to best exercise suffrage through the schools, by the press or through liberal associations. This would have restored the organic nature of universal suffrage. Obligatory voting was proposed as an extension of the voters' education, a form of self-education based on the observation that "*l'électeur, en votant, s'apprenant à voter, comme c'est, si l'on en croit le proverbe, en forgeant qu'on devient forgeron*".³³ Obligatory voting would also decrease deliberate abstentions, which had been mounting since 1889.³⁴ The problem with decreased participation for Benoist was that it created false majorities out of minorities; in addition, it restricted the number of citizens who were actually represented and also led to the election of candidates of poor quality.

For Benoist, the justifications provided previously in favour of compulsory voting were not convincing enough. For example, it had been suggested that legal requirement to vote resembled existing obligations, such as the duty to join family councils –in charge of dependent family members- and juries and to participate in elections of military officers. However, the type of judgment one had to make in these circumstances had moral dimensions, whereas in elections one had to judge less in terms of morality and more in terms of politics and personal benefit. Furthermore, the basic civic obligations of serving in the military and paying taxes were self-contained

³² Huard 1991, p. 157

³³ Ch.Benoist "De l'organisation du suffrage universel II : expédients et palliatifs", *Revue des Deux Mondes*, Paris, août 1895, p. 807

³⁴ Ibid. pp. 812-815; see also Ch.Benoist, *La Crise de l'État moderne. De l'organisation du suffrage universel*, Didot: Paris 1899, Annexes pp. 313-317

and gave immediate material results. Participation in the vote, however, did not guarantee that one would be represented thereafter.

Benoist certainly did not agree with the idea of a universal obligation. Of course, voting was already mandatory for French senators. But they were delegates who had deliberately chosen to take up their mandate, while citizen voters had received the right to vote automatically, even if they had to take some action to become registered as voters. Finally, the model of Belgium, which had imposed obligatory suffrage on voters, could not be transposed onto France. For, Belgium used a different system, where plural voting laws ensured a particular organisation to universal suffrage. In fact, France was not yet ready for such laws and had to take similar steps before it could introduce obligatory voting.

Felix Moreau: Voting as an expression of patriotic citizenship

The most comprehensive study of compulsory voting was published in 1896 by Felix Moreau, Professor of Law in Aix. His publication came after the legislative proposal by Guillemet in 1895, with the aim of supporting it. Moreau admitted that abstention was a recurring phenomenon in France since the Revolution, and had especially increased with regard to legislative elections after the establishment of universal suffrage in 1848. A legal treatment was necessary since neither the political parties nor public morals seemed willing or able so far to address the problem successfully.

Abstention, he argued, posed a serious problem, because of “*les dangers évidents qu’elle fait courir à la chose publique*”.³⁵ First of all, it was a constitutional abuse of the democratic and representative principles of the state. The idea of government by the people became questionable when citizens did not participate in representative procedures. Furthermore, universal suffrage was not ‘effectively’ the suffrage of every man and became a fiction if it existed only in theory and not in practice. The lack of participation by citizens in a political society resulted in a weak rather than

³⁵ F. Moreau, “Le vote obligatoire : Principe et sanctions”, *Revue politique et parlementaire*, t.VII, 1896, p. 38

vibrant democracy. In other words, abstention raised serious doubts about the quality or genuineness (*sincérité*) of a democratic regime.

Abstention was the principal cause of the political controversy over and lack of confidence in election results. For example, it enraged disenfranchised people who felt their own interests were not reflected by those who were deemed capable of voting. Such neglect could be interpreted as a betrayal, for eligible voters were granted voting rights on behalf of the people as a whole, including those who were considered incapable of voting. Secondly, abstention raised uncertainty about the real power of majorities over minorities. The result of a “*vote incomplet*” was contestable by the political opposition and could have consequences that could undermine the credibility of the Parliament and the stability of the government. Yet, compulsory removal of the false majority by the true was no guarantee of a better or more representative government, especially since the composition of abstainers was hazardous and unknown. “*Les abstentionnistes forment une masse obscure, inconnue, au sujet de laquelle la politique, qui est l’art de prévoir, n’est en possession d’aucun pronostic sur.*”³⁶ Indeed, the rates of abstention had often led to the holding of a second round of voting, or to the invalidation of results in individual voting districts.

According to Moreau, abstention harmed not only the state and its institutions, but also the character of the individual citizen. By abstaining, the voter lost the opportunity to fully develop his personality. He became “*un citoyen médiocre*”, who was politically uneducated and, therefore, less valuable as member of society than a citizen who voted regularly. Finally, he was also less trustworthy as a defender of liberty and of the political rights that emanated from it. In a time of internal crisis or war, the indifferent citizen might actually turn into a passive onlooker who would abandon the state to the hands of dictators or foreign enemies. The duty to vote was, in fact, a guarantee of national independence and freedom from absolutism.

On the other hand, the reasons behind abstention justified the urgency of the need to root it out from French society. First, Moreau rejected the claim that it constituted a

³⁶ Ibid. p. 40

legitimate means of political protest, a heroic suicide worthy of admiration or sympathy. Abstentionists:

*“comme les suicides, ils désertent un devoir, n’opposent à l’adversité qu’une âme pusillanime, renoncent à la lutte en même temps qu’à l’espoir. De tels citoyens dont la victoire seul soutient la fidélité, que l’échec décourage sans retour, la patrie peut les perdre sans regret ; ils ne représentent aucune force réelle.”*³⁷

In other words, Moreau observed that abstention was often driven by malign motives, such as a calculation of electoral interests, an awareness of a competitive disadvantage, fear of supporting a losing candidate or the unwillingness to accept such a prospect. In cases where lack of preference for any candidate was genuine and not politically motivated, the voter, he said, could always vote for ‘the lesser evil’.

The best solution to such an impasse was the option of casting a blank ballot. Indeed, Moreau supported the counting of blank ballots as *“suffrages exprimés”* that, unlike abstentions, should be given special significance. Blank ballots gave a possible exit both from making a haphazard or uninformed choice and from having to choose between two evils. It allowed the voter to vote his conscience and sent a clear message to unpopular candidates. Other solutions included assuring free and fair elections, empowering minorities through proportional representation and intellectuals through plural voting.

The law against abstention was also a good measure against ignorance of or aversion to politics. For the first category, the legal obligation would work as a means of instruction on how to make a reasoned choice. Voters who abstained because they were overconfident that their candidate would win would also benefit from such a measure. In the second category were those who turned down politics on the grounds that it was either too complicated a task and thus best left to the professionals, or that it was too corrupt or dishonourable. Of these, the first had to be forced to the polls, to learn that voting was both easy and necessary; the second group simply had to take

³⁷ Ibid. p. 42

their responsibility as citizens and remember that deserting their duty was also a base or dishonourable behaviour.

Most importantly, obligatory voting would act instructively for those who did not care about society or the nation. “*Ils ne se sentent pas citoyens. C’est un sens qui leur manqué, étouffé sous une foule des minuscules considérations personnelles*”.³⁸ The law could make them look beyond their personal concerns and pleasures and engage in at least a modicum of civic action. The exercise of voting might give them a feeling of good citizenship and prevent them from using the occasion to cast a protest vote for radical or subversive groups as revenge for being coerced into voting. On the contrary, they might experience remorse for their previous failures to participate and attempt to nudge the political reality in what they considered the right direction. Finally, those who may have seemed to abstain out of indifference, but in reality had valid or unavoidable force majeure reasons, would be enabled to vote by mail. The rest, who insisted on not voting, would be struck from the electoral rolls and excluded from political life in general.

Of course, the most crucial objection was related to the constitutional question of sovereignty. Compulsory voting was accused of being a breach of the inviolable freedoms of voters, who were the core units of national sovereignty. Placing restrictions on citizens thus constituted a limitation of national sovereignty. According to Moreau, however, this “*conception orgueilleuse, égoïste, individuelle, du droit de suffrage*”³⁹ was exaggerated, because in the end it only allowed politicians to manipulate these conceited masses. Moreau felt that the demand for such an unlimited and unaccountable use of sovereignty among voters was just as dangerous as the arbitrary authority of royal sovereignty. It could lead to an uncontrolled tyranny of voters over those who lacked voting rights. Moreau here seems to agree with Benjamin Constant on the potential problems of giving unlimited power to the people. He draws even more on Guizot’s ideal of the sovereignty of impersonal reason: “*la justice, la raison et la vérité*”⁴⁰ are the best guarantees of sovereignty, as opposed to

³⁸ Ibid. p. 46

³⁹ Ibid. p. 49

⁴⁰ Hauchecorne 2004, p. 32

the voluntary principle of national sovereignty. Moreau recognised a system where everyone participates by law and not according to their free will as the most sustainable and democratic system.

Moreau felt that, in reality, the right to vote exists to serve the social interest and therefore has the character of a public function. It is bound to the general interest, because it gives the opportunity to citizens to develop themselves and defend their liberty. Like any other public function, suffrage has an immediate effect on society: it requires some moral aptitude, freedom and integrity; it is exercised by some people for the benefit of all; and it is determined by the state as a reflection of its relation to its members. Just as the state decided to exclude some citizens from the right to vote, it could decide to make it obligatory for others. In this sense, the right to vote differs from the right to property. The latter does not directly apply to society as a whole and does not derive from citizenship, but emanates rather from individual work. Another private right that could be compared to suffrage is legal parenthood, though parents and guardians are legally accountable in the event of negligence or abuse. In fact, suffrage can be seen as one of the group of rights that public opinion accepts as compulsory: tax payment, jury duty, military conscription, compulsory education and legal parenthood. Moreau follows here the German jurist Bluntschli in recognising that (these) civic rights are indeed civic duties. Consequently, voting as a duty is both morally sound and legally justified.

Finally, Moreau rejects the notion that obligatory voting is a violation of individual liberty and a right to abstain. Civic liberties, he writes, are those human rights the exercise of which is essential for the life and development of the human being. The phenomenon of abstention itself confirms that voting is not such an indispensable right: if it was indispensable for one's life, nobody would voluntarily abstain from it. On the other hand, citizens are not justified in neglecting or renouncing the vote on the grounds that they never asked for it in the first place. For, in a democracy, a citizen not only enjoys rights, but also takes on duties. *“Chacun appartient à une société politique; il en reçoit, contre son gré peut-être, des bienfaits; il doit en subir les charges. La démocratie confère des avantages et impose des devoirs : les uns et*

les autres forment un tout indivisible".⁴¹ In other words, membership in a political society requires that one assumes the responsibility to participate in its organisation.

Moreau dedicates a large part of his treatise to discussing the sanctions for not voting. He characteristically admits that the objective of punishment is not to provide redress or compensation for the harm induced by abstention, but to chastise non-voters for neglecting the interests of their fellow citizens. In particular, he claims that one who abstains has already punished himself by missing the chance to express and defend his own interests. In this sense, abstention is a form of self-punishment and does not require further legal action. However, a voter acts not only for himself, but also on behalf of disenfranchised citizens and society as a whole.⁴² And since the dangers of abstention affect everybody, it is necessary to create concrete disincentives for potential abstainers. Furthermore, the fines must apply to individuals, not groups, in order to drive home the seriousness of the offence. Therefore, depriving a whole constituency from being represented in Parliament, as a result of high rates of abstention, is out of the question. Electoral representation is not a conditional, but an absolute right and cannot be revoked. Besides, such an action would also punish citizens who did vote. The sanctions must observe the principle of fairness and proportionality.

The main cluster of possible penalties consisted of different types of fines that citizens had to pay as a punishment for not voting. One option was to charge them with the operational costs of a resulting second round. Another widely accepted option was to fine every abstainer either a fixed sum or one proportional to his income. The first choice was pragmatically unfair: the more voters abstained, the less the individual share of total costs to bear would be. But it was also based on a faulty principle, since the abstaining voter was treated as having committed a group offence and not as the individual transgressor of a legal norm. But to charge individual abstainers a sum of money was also not seen as appropriate. It would assign a financial value to the act of voting and make the failure to observe the civic duty appear to be the same as any common criminal or private offence. In other words, the imposition of fines did not

⁴¹ *Ibid.* p. 52

⁴² *Ibid.* p. 53

correspond to the unique relation between the civic aspects of the offence and the type of punishment.

The best way to punish such a civil wrong was through a system that addressed the moral and civic character of the offence. Therefore, the publication or billposting of a list of the names of abstainers — the *affichage* — was an excellent tool to deter potential abstainers through the threat of shaming and public embarrassment. This list would appear some days after an election as well as some days before the next one on the door of the municipal building.

A second, more controversial, punishment was to suspend the voting rights of abstainers for a fixed term or permanently. This was a solution preferred by Moreau, for it would be a punishment commensurate with the offence and treat voters as legal persons, that is, in the same capacity as that in which they had committed the offence. It could be combined with a deprivation of candidate eligibility, as well as for other public functions, including legal guardianship and jury duty. For “*celui qui demande à la société politique sa confiance et sa délégation a manqué envers elle à un devoir primordial. L’abstention n’est pas un titre à une faveur, ni une garantie d’une bonne gestion des fonctions publiques*”.⁴³ This was in line with the belief that the acquisition of suffrage required a certain moral aptitude. The voter who renounced the use of his civil right to vote was characterised as morally incompetent, and should therefore become a reprehensible or deficient person with regard to ‘*jus commune*’.

The system of punishment proposed by Moreau himself comprised three different levels of moral and civic chastisement. To begin with, voter registration should also be compulsory, and noncompliance punishable as an administrative offence by a fine and exclusion from elections for one year. Conversely, voluntary removal from the electoral rolls should not be allowed, because it contradicted the sense of suffrage as a duty from which there is no exemption. With regard to abstention, the first infraction should lead to the publication of the offenders’ names at the town hall and in the newspapers. The second and third abstentions should be punished by a suspension of voting rights for five years, and the fourth with a permanent revocation. Before

⁴³ *Ibid.* p. 62

sentencing, citizens should receive notifications and a possibility to show that an abstention was warranted.

Further, Moreau provided detailed descriptions of the best suited jurisdictional courts and the simplest bureaucratic procedures that could be followed to track down offenders and apply penalties. He explained that a gradation of penalties, from “*la mesure platonique de l’affichage*” to disenfranchisement, was necessary to mark the difference between a first offence and repeated offences. Moreau’s treatise provides an excellently detailed view on differences between the various types of penalties, in terms of both their ideological origin and their operational efficiency. His suggestion of a system of sanctions echoed the one advocated in the National Assembly by Guillemet in 1895. By the mid 1890s, obligatory voting had become a hotly contested topic in French politics, as demonstrated by the interest it raised among various political stakeholders of the time.

Union Libéral Republicaine: Voting as protecting the disenfranchised

In fact, the problem of abstention became more politicised towards the turn of the century. On 2 May 1897, the Committee of the *Union Libéral Republicaine* held a conference in St-Germain-en-Laye, and dedicated a large part of the proceedings to the question of obligatory voting. In his full analysis of obligatory voting, Deloison provided a clear reason why he viewed it as legitimate. Voting, he said, was in principle not a private right, “*on ne peut ni l’abandonner, ni y renoncer, ni le déléguer, ni le céder, ni le vendre*”.⁴⁴ The current system excluded women, minors, soldiers, convicts and others. “*En résumé, le suffrage universel n’est qu’un suffrage restreint, très étendu. Or, la base du régime parlementaire repose sur la volonté nationale exprimée par ceux qui sont appelés à exercer ce droit*” (emphasis added).⁴⁵ Voters represented not only themselves, but also those citizens who were not in the favourable position of having the right to vote. Thus, a moral obligation to protect the

⁴⁴ Deloison, *Bulletin du Comité de l’Union libérale républicaine*, 2. série, 2. année, n.4, mai 1897, p. 95

⁴⁵ *Ibid.*

interests of the non-voting population, established by the de facto restrictions on suffrage, justified the legal obligation.

In addition, both Deloison and Henri Barboux highlighted the fact that abstention was biased against the conservatives:

*“Soit qu’on examine en détail les listes électorales, et qu’on cherche à induire du nom, de la condition sociale, de la profession des citoyens l’opinion probable qu’ils auraient exprimée, [...] on arrive très vite à se convaincre que le plus grand nombre des abstentionnistes n’appartient certainement ni au parti radical, ni au parti socialiste”*⁴⁶.

In fact, socialists and radicals were seen by the other political groups as the main enemies of the time in the struggle of the social classes.⁴⁷ According to Barboux, the liberals had to become more active as voters in order to defend their private property and wealth, as well as their corresponding political ideas. They should in no case be dissuaded from voting by the hostile and militant politics of radicals, who had a much better record of participation. Hence, abstention was depicted as undesirable political behaviour.

Furthermore, Deloison observed that the lowest rates of abstention occurred in constituencies won by moderate republicans and liberals, compared to those won by radicals-socialists. In the former, they were between 26% and 29%, in the latter, between 39% and 48%. Additionally, in the first constituencies the votes for moderates and liberals were more than half of the registered voters. The number of abstainers never surpassed the number of votes won by liberals. According to Deloison, this meant two things. First, voters who abstained ought to come from the moderates and, second, as long as moderates maintained the support of the majority among most registered voters, they did not need to worry if abstainers decided to join forces with the radicals⁴⁸.

⁴⁶ H.Barboux, *Bulletin du Comité de l’Union libérale républicaine*, 2. série, 2. année, n.4, mai 1897, p.

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⁴⁷ Hauchecorne 2004, p. 43

⁴⁸ Deloison 1897, p. 104

On this basis, moderates seemed to have little hope of immediate partisan benefit from instituting obligatory voting. Their intention was simply to protect the safety of the regime. The unrest that followed the French Revolution evidenced the perils of excessive abstention. “*Il n’y a pas que les timides et les indifférents qui, quelquefois, sans s’en rendre compte, poussent le pays vers des destinées redoutables*”.⁴⁹ This phrase encapsulates the belief that abstention was a precursor to violence and instability; conversely, if abstainers were to vote, they would act as a moderate, pacifying force that could ensure the security and preservation of the regime.

Catholics: Voting as a sacred duty

Besides liberal conservatives, their fellow conservatives of more Catholic political orientation also used their moral repertoire to convince their party base to attend the polls. This followed a concerted effort by the Pope and the French episcopate to describe voting as a Christian duty.⁵⁰ “*Si le devoir électoral est commun à tous les citoyens soucieux de l’honneur et de la prospérité du pays, à plus forte raison les électeurs catholiques sont-ils tenus, en conscience, de le remplir avec fidélité.*”⁵¹ The main underlying assumption of this imperative was that Catholics had a sacred duty to care about the common good of society and to serve the interests of the religion, the country and each locality. Pope Leon XIII himself proclaimed that a good Christian must contribute with ‘love’ and ‘zeal’ to the destinies of the motherland. Therefore, they had not only to exercise their voting duty, but to exercise it with responsibility by electing the most honest representatives, who would not be enemies of the religion and would make sure the ideas of Christianity were integrated into the laws and the education of their children.

⁴⁹ Ibid. p. 106

⁵⁰ J.C.Cortis, *De l’organisation des forces conservatrices sociales contre le socialisme collectiviste*, H.Oudin : Paris, 1896, pp. 187-199

⁵¹ *Pastoral Letter of the Archbishop of Avignon and the Bishops of Montpellier, Valence, Viviers, Nimes*, April 1892, cited in *ibid.*

To this end, a number of French bishops engaged in a campaign to teach the Catholic flock about their voting duties (“*éclairer les fidèles*”). In practice, they inserted special chapters in their books of catechism, intermixing fundamental principles of the Catholic faith with reminders of the electoral duties of the faithful. These included various aphorisms, such as “*c’est un péché de mal voter aux élections*”, because elections were “*un moyen puissant d’être apôtre de Jésus-Christ*” and electors “*gravement coupables envers Dieu, et [...] responsables devant lui des actes mauvais que commettront les députés et sénateurs nommés par eux*”.⁵² In other words, the vocabulary of the Church was used to infuse a pro-voting ethic into churchgoers and to encourage them to choose Church-supported candidates in elections. These ecclesiastical teachings apparently caused the wrath of republicans, who, accusing the Church of invading the public domain, prohibited such political catechisms by law. Nevertheless, the insertions into the catechisms continued to receive indirect support by the Pope, despite efforts from the republican regime to contain it.

Duthoit: Do it like the Belgians

Another conservative supporter of obligatory suffrage, who was strongly influenced by the example of Belgium and belonged to the Catholic movement within the parliamentary right, was Eugene Duthoit. A Professor of Law at the University of Lille, Duthoit outlined an agenda of electoral reforms that aimed at recouping the benefits the conservatives had lost when restricted suffrage was abolished. It included old conservative proposals such as interest representation and plural voting, together with new ones, like women's suffrage, and proportional representation, which would give power to political minorities.⁵³ Some of these reforms would themselves hopefully contribute to a decrease of abstention, by creating new motivation for citizens to cast their votes.⁵⁴

⁵² Cortis 1896, pp. 196-198

⁵³ E.Duthoit, *Le Suffrage de demain. Régime électoral d’une démocratie organisée*. Perrin : Paris, 1901, pp. 1-11

⁵⁴ Ch.Francois *La représentation des intérêts dans les corps élus*, A.Rousseau : Paris, 1899, p. 310

Obligatory voting was part of this package of reforms and became closely associated with the idea of proportional representation. Just as majority voting led to the non-representation of voters who had voted for the losing candidates, voluntary voting failed to ensure the representation of abstainers. To illustrate this, Duthoit pointed to the number of abstainers and votes for losing candidates: together, this number was consistently greater than the number of votes obtained by the winning candidates.⁵⁵ Thus, proportional representation would give a voice to defeated voters and obligatory voting to abstainers. In fact, obligatory voting could work only in a proportional system: unless all votes counted towards the final result, forcing voters would simply result in more blank ballots.

To defend obligatory voting from accusations that it violated liberty, Duthoit made two arguments. First, he showed that such an obligation protected the spirit of patriotism and guaranteed political liberty. This was illustrated by the old comparison between voters and soldiers. “*Remplirait-il, aux heures de péril, tout son devoir de soldat, celui qui ne sait pas sacrifier quelques heures de distraction à l’accomplissement de son devoir d’électeur?*”⁵⁶ Secondly, Duthoit allowed for a few important provisions to protect the right to abstain, which was established when had a legitimate reason to refuse to support any candidate. Such voters still had two options: to write on their ballot the name of somebody who was not an official candidate, or to cast a blank ballot.

Duthoit paid special attention to the meaning of blank votes. The law, he said, could assign a special role to them and “*faute d’un candidate acceptable, décider que les bulletins blancs et les divers entrent en ligne de compte pour le calcul de la majorité*”.⁵⁷ Calculating blank and unregistered ballots would allow, for example, new candidates to come forward after an election in cases where blank ballots received the majority of votes. However, the numbers of abstainers could not be counted in a similar manner, but should be added to the ballots of elected candidates or split between all candidates, because abstention could be interpreted as tacit

⁵⁵ E.Duthoit, “Vote secret, vote obligatoire, vote plural”, *Revue de Lille*, janvier 1898, p. 6

⁵⁶ *Ibid.* p. 7

⁵⁷ *Ibid.* p. 8

support for all of them.⁵⁸ Duthoit rejected concerns that this practice would lead to a rise of spoilt ballots. He suspected that only a minority of abstainers were led by anarchist convictions or by an inability to choose between candidates. Most of them simply abstained out of indifference or an unwillingness to sacrifice their Sundays.

Law proposals in the 1900s: Voting as a link to the community

The list of bills and reports concerning obligatory voting continued in the first years of the 20th century. Ideologically, the conception was mostly closely linked to the conservative doctrine of voting duty, although the republican majority was sometimes in favour of obligatory too, either as part of their conservative turn, or in pursuing their ideal of public education as a means of fighting radical and anarchist influences. The liberal-conservative Lefèvre-Pontalis claimed that obligatory voting was thus the best guarantee of genuine and free suffrage.⁵⁹ The contingency of the varying motivations for the reform, as well as the fluctuations in voters' intentions, makes a contextual reading of electoral reform a most valuable source for understanding electoral principles.

After the rejection of obligatory voting by the Parliament in 1895, it took five years before a new legislative proposal was submitted. On 2 April 1900, the conservative Georges Berry, from the *Union des Droites*, suggested the introduction of a 'black list' for electoral abstainers.⁶⁰ Berry's main concern over abstention was the ambiguity it caused in electoral results and the resulting weak authority of elected representatives. Like his predecessors, he thought that limited participation distorted the will of the nation ("*fausse la volonté du pays*") and would sooner or later lead to government by aggressive minorities.

⁵⁸ A.Besson (1897), *Essai sur la représentation proportionnelle de la majorité et des minorités*, thèse pour le doctorat, soutenue devant la Faculté de droit de l'Université de Dijon, Jobard : Dijon, p. 68-70

⁵⁹ A.Lefèvre-Pontalis (1902), *Les élections en Europe à la fin du XIXe siècle*, Paris : Plon-Nourrit et Cie, pp. 39-40

⁶⁰ Georges Berry, *Journal Officiel*, annexe 1575 (2 avril 1900), p. 783

A system of punishment enforced by effective bureaucratic tools for follow-up would help resolve this problem. His proposal a combination of fines, posting of names and removal from voter lists. In addition, the electoral rolls would include a special column next to each voter's name, the '*casier électoral*'. This would record each voter's record of participation, including pending punishments for non-participation. Each new voter registering in a community would be obliged to produce a copy of his *casier*; this would prevent abstainers from evading punishment by transferring their voting rights to new communities.

A new proposal by Du Perier de Larsan, of the right-wing progressive republicans, was submitted twice in 1903.⁶¹ Unlike the previous proposal by Berry, de Larsan insisted that the sole form of punishment should be restriction of civil rights, without any financial sanctions. The reason was that, unlike Senators, ordinary citizens could not be asked at their birth if they were willing to accept their voting mandate. Therefore, the application of sanctions should be even milder than those for Senators, providing opportunities for the non-voters to show they had legitimate reasons for non-participation and providing an easy way to verify their excuses. The law was considered moderate, designed to target only the indifferent voters who would not be bothered to produce a justification for their absence. Furthermore, it aimed at increasing participation only in national elections and not in local or other contests, which were too frequent and where electors were driven by personal interests. These provisions underlined, of course, the primary role of national elections, but also the bill's central principle of supporting political participation that was inspired by community-values, not participation for reasons of narrow personal gain or nepotistic reasons.

Voting as expression of social solidarity

At the turn of the century, the topic appears as a subject in three doctoral theses of law. In 1898, it is treated favourably by Paul Coutant, who was a lawyer in Paris, a

⁶¹ Du Perier de Larsan, *Journal Officiel*, annexe 1029 (18 juin 1903), pp. 859-860

future member of parliament (centre-left) and, later, a local and a Supreme Court judge. The second is Adolph Auguste, a lawyer of the Supreme Court, who defended his thesis in 1901. The third, N.Quiri, submitted his dissertation arguing against obligatory voting in 1908. Although the three manuscripts have some differences, the structure in all follows a three-part scheme: theory, practice, and case-studies. In particular, the first part focuses on the theories of right and duty, the second on the types of sanctions and the difficulties of enforcement, and the third on the examples of Switzerland and Belgium, where obligatory voting had already been introduced. Following this structure, Paul Coutant offers one of the most elaborate studies of obligatory voting from that period.

Coutant disagrees with the traditional idea of voting as a natural right, determined solely by individuals. He criticises it for being incompatible with national sovereignty and, in particular, with the idea of a unified and indivisible nation. Yet, the general will is not as abstract as in Rousseau's chimerical theory of unanimous consent; it is expressed through the majority of consenting voters.⁶² In this sense, elections and the rule of the majority is a pragmatic and operational compromise for the organisation of democratic government. In contrast, universal suffrage is another unrealistic consequence of the theory of voting as a right. The exclusion of women, minors and other groups in society confirms that voting does not 'by nature' inevitably belong to every human being. It requires political capacity, freedom of conscience and social independence. Finally, the traditional conception of voting right is egoistic; it resembles the right to own property and can thus easily lapse into the logic of possession. Following Esmein, Laffitte and others, Coutant argues that voting is a matter of the political *qua* national liberty; it has consequences for the whole society and must therefore be exercised in the interest of all.

Although Coutant refuses the validity of the rights-based theory, he does not conclude that the duty theory is the correct answer. Quite the opposite, he thinks that counter-revolutionaries like Barnave or Littré adopt an ideology that sees the individual as

⁶² P.Coutant (1898), *Le vote obligatoire*, Thèse pour le Doctorat, Faculté de Droit, Université de Paris, Paris : Chevalier-Marescq, pp. 26-40

subordinate or dependent on the state.⁶³ Such a view befits only ancient republics or absolute monarchies. Having found deficiencies in both theories, Coutant suggests that the best course of action is to combine them and admit that suffrage has a dual nature, as had already been done by the introduction of universal suffrage as a universal duty in 1848.

Hence, voting is both a right and a duty, as argued by many other constitutional and political authors of the time. In addition to John Stuart Mill, the Belgian Prime Minister Beernaert and the Swiss/German jurist Bluntschli, Coutant also quotes several French republicans. For example, the initiator of the 1880 bill on obligatory voting, Bardoux is cited to support the argument that voting as a right implies a correlative duty to vote. But the argument mainly relies on the philosophy of Fouillée, according to whom suffrage involves three dimensions: the individual, the social and the organic; that is, it serves the individual, the individual's fellow citizens and the nation as a whole. In sum, for Coutant, suffrage is first of all a right, but not an absolute (i.e. private) right. It is a public right, which implies that the individual is not free to choose whether to exercise it or not. In other words, it is a public duty owed to society in the general interest of society.

*“L’idée de droit est pour ainsi dire soudée à l’idée de devoir, si l’électeur veut renoncer à l’exercice de son droit, il ne le peut pas; car ne pas exercer son droit, c’est négliger son devoir. Or, il peut bien compromettre ses intérêts particuliers en renonçant à son droit, il ne doit pas, il ne peut pas compromettre les intérêts généraux, les intérêts de la société en refusant d’accomplir son devoir. En un mot, l’électeur, s’il a naturellement le droit de faire son devoir, a aussi le devoir d’exercer son droit.”*⁶⁴

Quiri's dissertation in law from 1908 belongs in the same centre-left trend in favour of obligatory voting. Quiri develops a theory of voting duty (*devoir*) based on the idea that, unlike the old aristocratic idea of function (*fonction*), voting is a duty for every citizen. “*Le seul fait d’appartenir au corps social constitue un engagement à ne pas*

⁶³ Ibid. p. 52

⁶⁴ Ibid. pp. 63-64

se désintéresser des affaires communes".⁶⁵ Being a member of society automatically entails active engagement in public affairs, ranging from tax contributions to military conscription. "A côté du devoir militaire, il y a le devoir civique" was the main line of justification given in the new bill submitted to the National Assembly in 1905.⁶⁶ Quiri's opinions were mostly influenced by Leon Bourgeois' social republican doctrine of solidarism. According to Bourgeois, the social pact was a kind of quasi-contract that raised the obligations of the individual members of society. These obligations served as a compensation for having benefitted since birth from the social advantages and progress achieved by previous generations.⁶⁷ Offering one's vote each time society 'consulted its members' was one such obligation.

Voluntary obligation and proportional representation

Law student Auguste Adolph examined the similarities and differences between compulsory voting in first and second-degree (direct and indirect) elections.⁶⁸ He argues that the obligation to vote imposed on senatorial electors, i.e. the second tier of voters who elected members of the Senate, is justified by the very nature of their position. In particular, they are subject to a *convention*, to which they have entered voluntarily. In other words, they have agreed with their constituents to take up a mandate; as a result, the latter can count on them and have the right to punish them if they betray their confidence. The situation is different when it comes to obliging first-degree voters. They have not accepted a mandate voluntarily, but they have been charged with it automatically. Therefore, the voting of ordinary voters cannot be justified as an obligation that derives from a particular social contract, but as a clear social duty, i.e. the duty that every individual has to act according to the general interest.

⁶⁵ N.Quiri (1908), *Le vote obligatoire*, Thèse pour le Doctorat, Faculté de Droit, Université de Paris, Paris : Michalon, pp. 35-44

⁶⁶ Ory, *Journal Officiel* (7 juillet 1905)

⁶⁷ Quiri 1908, p. 41

⁶⁸ A.Adolph (1901), *Le vote obligatoire*, Thèse pour le Doctorat, Faculté de Droit, Université de Paris, Paris : Pedone, pp. 17-29

In response to the objections raised against applying the kind of obligatory voting of second-degree electors to ordinary voters, Mallat has a counter-proposal. First, he stresses that there is a need to know the will of the majority of electors ‘exactly and absolutely’; hence, voting was a special mandate not only for senatorial electors, but also for ordinary voters.⁶⁹ Then he suggests that the only way to impose an obligation on ordinary voters without violating their individual liberty was to make registration in voting lists voluntary. In fact, it was important to change the current system, where a person became an elector without being consulted or asked, sometimes against his will or even his own knowledge. In his proposed system, a distinction was made between Frenchmen and French citizens, the latter of whom would have voluntarily chosen to accept the obligation of voting. On this basis, the state could enforce very strict penalties against abstention on these voluntarily registered voters, including a fine of 500 francs and thereafter a permanent removal from the electoral rolls.

Several authors of the time insisted that abstention should be seen in connection with other reforms. Its association with proportional representation becomes especially topical after 1900. For example, Charles Granrut connects the two principles within a general project of national representation.⁷⁰ One reason for abstention, he writes, is minority parties' rational fear of losing an election, which would be eliminated with the introduction of proportional minority representation. But, abstention is mainly a reaction to the excessive number of elections — on average three per year — which understandably results in voter fatigue. Therefore, the solution should target the moral aspects of abstention, and be carried out through publicising the names of abstainers on public lists and in daily newspapers.

The combination of a ‘proportional representation of the minorities’ and obligatory voting was also supported by Ferneuil. It served as a solution to the problem that “*la démocratie est devenue chez nous un véritable trompe-l’œil [...] une étiquette vide*”.⁷¹ The ultimate goal was to introduce into the French assembly ‘the intellectual and

⁶⁹ A.Mallat (1906), “Le vote obligatoire”, *Revue politique et parlementaire*, 12, pp. 119-125

⁷⁰ Ch.Granrut (1904), *Réformes Électorales : Question à l’ordre du jour*, Reims : Gobert et Helluy, pp. 1-15. See also R.de la Grasserie (1911), *Systèmes électoraux des différents peuples*, Paris : Felix Alcan, pp. 220-223

⁷¹ Th.Ferneuil (1904), “La réforme électorale et le parti progressiste”, *Revue politique et parlementaire*, Paris, pp. 507-518

moral elite of the country', which had been absent from legislative deliberations, thus leaving a large part of the country unrepresented. In this context, obligatory voting would work as a measure towards political justice and greater inclusion (“*le suffrage de tous les citoyens est indispensable*”). Ferneuil argued that the Progressive Party was better suited than the Opportunist Republicans to introduce the reform in their party platform. Additional clauses suggested reducing by one third to one half the number of deputies, radically shortening the parliamentary terms to six months and introducing voting by mail. The latter was particularly important as it would allow votes to be collected of those who abstained involuntarily, due to work-related travel or illness. These were active citizens, who were more numerous and whose vote, according to some authors, was more important than the vote of passive and disinterested voters.⁷²

A solution to inter-war parliamentary instability

Compulsory voting became generally popular immediately after World War I and many countries adopted the reform in those years.⁷³ The examples abound: Argentina in 1912, Netherlands in 1917, Australia in 1924, Greece in 1926 and Austria in 1929 (Annex 2). In fact, the worldwide adoption of obligatory voting at that time led French statesmen very close to following their example. Two bills introduced in 1919 and 1921 led to the most serious consideration of obligatory voting since the Assembly had last discussed it in 1895.

A second more important reason underlying this new interest was the peculiarity of the political context. The 1920s and 1930s were a time when parliamentarism was systematically questioned and disputed, as exemplified by Carl Schmitt's *The Crisis of Parliamentary Democracy* (1923). In this context, centrist political actors conceived obligatory voting as an antidote to the crisis of representative institutions, a

⁷² A.Labussière (1905), “Le vote par correspondance”, *Revue politique et parlementaire*, July 1905, Paris, pp. 261-269

⁷³ E.g. Netherlands 1917, Luxembourg 1919, Hungary/Czechoslovakia 1920, Australia 1924, Greece 1926, Austria 1929

solution to the practical and philosophical vacuum to which the current political system had fallen. It would cure the plague of abstention, ensure national representation and, as such, resist the assaults of both the far right and the far left on electoral democracy.

Already before the War, interest in obligatory voting was resurfacing among French parliamentarians and civil society activists. In 1914, industrialists, merchants, large professional associations and syndicalists⁷⁴ founded the “*Ligue du vote obligatoire*” in Paris. Its aim was to advocate for the reform, raise grassroots funds towards this end and recruit volunteers to spread the word. A few weeks in advance of the 1914 elections, the League declared through press releases that it would only support those candidates who would work to introduce compulsory voting.⁷⁵ In early 1928, for a second time, the League attempted to initiate a public debate and urge prospective candidates to advocate for obligatory voting, bearing in mind the imminent elections.

The driving idea was to reinforce universal suffrage and ensure a larger and more accurate representation of citizens’ interests, in order to secure the stability of the parliamentary regime and the authority of governments in the eyes of foreign leaders, and thus help the country get out of its crisis.⁷⁶ The League claimed that it was acting without partisan political motives as it had the sympathy of a number of different parties, yet ideologically at least it was on the right-wing of the spectrum, as the conservative Raymond Poincare stated: “*il appartient a tous les citoyens de relever les courages, de stimuler les bonnes volontes, de raviver, de coordonner, de discipliner, en vue du bien general, les energies individuelles...*”. In 1932, it claimed official support from over 300 deputies, several Senators and a unified nonpartisan citizen movement active in the Parisian and provincial press.⁷⁷

The result of the League’s pressure were several new, yet rather unsuccessful, legislative proposals. They were submitted after the April-May 1914 elections by

⁷⁴ Here the term ‘syndicalists’ must have referred to members of right-wing trade unions; I am grateful to Kari Palonen for this remark.

⁷⁵ *Le Temps*, 15 Apr. 1914, no.19276, p. 3

⁷⁶ *Le Gaulois*, 18 Jan. 1928, no.18367, p. 2; *Le Temps*, 18 Jan.1928, no.24259, p. 4 ; see also the issues of 19, 20, 22 Jan. 1928

⁷⁷ *Le Temps*, 17 Feb. 1932, no.25742, p. 4 ; 23 Apr. 1932, no.25808, p. 3

Tournade⁷⁸ and Berry-Driant,⁷⁹ right-wing members of the ‘sacred’ coalition government.⁸⁰ Nevertheless, the reform was successful in some localities, for instance, in the Alpes-Maritimes and Nord.⁸¹ In 1931 and 1932, new law proposals were submitted to the Assembly by two centre-right deputies, suggesting that the punishment for noncompliance with the ‘electoral conscription’ should be reprimand, a suspension of suffrage and ineligibility for promotions in the civil service.⁸²

In February 1932, following a report by Tremintin two weeks after the December 1931 bill and after new pressure from the League, the Assembly did accept obligatory voting, with a raise of hands, during a discussion on electoral reform. However, some days later, the Senate, after consulting a second report by Chéron on behalf of the Commission of General Administration, removed the article from the text and forced the Assembly to accept the mutilated bill. Chéron admitted that strong majorities that could make firm decisions were extremely important to have at the time, but concluded that this was already ensured by the existing system in that it provided for runoffs, as opposed to one-round elections with obligatory voting.⁸³ A last effort was then made by centre-right deputy De Champeaux⁸⁴ and Senator Bourdeaux.⁸⁵ However, now it seemed that not only were the political divisions too great to allow for such institutional innovation, but also the tide seemed to be changing and a new support for elitism was undermining the theoretical presuppositions of the reform.

At the same time, the idea was gaining some prominence among centre-left radicals and in socialist circles. A proposal by deputy Failliot from the centre-left *Gauche*

⁷⁸ H.Tournade, *Journal Officiel*, annexe 58 (11 Jun.1914); see also annexe 2793 (26 Oct. 1909), p. 50

⁷⁹ Berry and Driant, *Journal Officiel*, annexe 50, (9 Jun. 1914), p. 1850

⁸⁰ *Union sacrée* was the French coalition government during World War I.

⁸¹ The general councils of the two regions adopted resolutions in favour of obligatory voting in May 1914 (Alpes-Maritimes) and November 1930 (Nord) respectively. E.g. *Le Temps*, 26 May 1914, no.19317, p. 3

⁸² H.Labroue et al, *Journal Officiel*, annexe 5922 (10 Dec. 1931), p.411 ; L.Marin et al, *Journal Officiel*, annexe 201 (21 Jun. 1932), p. 786

⁸³ *Le Temps*, 26 Feb. 1932 no.25751, p. 4

⁸⁴ F.DeChampeaux, *Journal Officiel*, annexe 5910 (22 Jun. 1939), p. 815

⁸⁵ *Le Temps*, 19 Jan. 1939, no.28252, p. 4

*Démocratique*⁸⁶ was followed in 1912 by a Senate proposal, submitted by Pauliat and by Maxime Lecomte, vice-president of the Senate.⁸⁷ Obligatory voting — along with women's suffrage and family voting⁸⁸ — was then adopted by local sections of the Republican-Socialist party.⁸⁹ From 1927 to 1934 there were five law proposals by radical and Republican-Socialist members of Parliament, two by Jean⁹⁰ and Planche⁹¹ and three by Auguste Gratien.⁹² Gratien's first proposal in 1929 was followed by an explication by Guy la Chambre to the Commission of Universal Suffrage on 10 April 1830.⁹³ Their interest in obligatory suffrage suggests that they supported a republican regime and representative institutions, through which the members of the Republican-Socialist Party could promote their own ideas.

The Barthélemy report: Halting the rise of militant Socialism (1922)

In 1919-1921, two crucial government proposals are submitted by deputy Roulleaux-Dugage (*Federation Republicaine*) and Baréty, deputy of the centre-right government. During these times, the issue indeed enters the programme of the *Fédération républicaine*, the main liberal right-wing party, which formed a right-wing government coalition in November 1919 and in 1928. Obligatory voting is part of a package of potential electoral reforms, along with proportional representation, family and female voting. Roulleaux-Dugage's proposal is centred on the idea of

⁸⁶ A.Failliot, *Journal Officiel*, annexe 1715 (19.5.1908), p. 431 ; A.Failliot, *Journal Officiel*, annexe 1127 (6 Jul. 1911), p. 1109

⁸⁷ *Journal Officiel*, Débats parlementaires, Sénat (5 Nov. 1912), p. 1399, cited in L.Duguit (1923), *Traité de Droit Constitutionnel*, Paris : Fontemoing, p. 448

⁸⁸ Family voting was a system, according to which the male head of a family had additional votes on behalf of his wife and each of his underage children; it was aimed at increasing the birth-rate in France after WWI, to compensate for the numerous casualties of the war.

⁸⁹ Congrès du parti républicain socialiste des Bouches-du-Rhône, Marseille, 26 May 1919, see *Le Temps* 27 May 1919, p. 2 ; Assemblée générale du parti républicain démocratique et social de la Seine (Félix Liouville), 8 Dec. 1922, see *Le Temps* 9 Dec. 1922 ; The same triptych of electoral reform is also adopted by the nationalist Parti Social Français, see *Parti social français. Une mystique, un programme*, Paris : Société d'éditions et d'abonnements (1936), p. 39

⁹⁰ V.Jean, *Journal Officiel*, annexe 4200 (24 Mar. 1927), p. 409

⁹¹ C.Planche, *Journal Officiel*, annexe 1106 (18 Jan. 1929), p. 78

⁹² A.Gratien, *Journal Officiel*, annexe 1428 (8 Mar. 1929), p. 484 ; annexe 454 (11.7.1932), p. 969 ; annexe 3449 (29 May 1934), p. 778

⁹³ *Le Temps*, 11 Apr. 1830, n.25069, p. 3

‘encouraging the exercise of the right to vote’.⁹⁴ In order to avoid creating a negative feeling of compulsion, the bill leaves non-voters a greater possibility to abstain. In particular, it does not suggest punishing abstainers, but rather compensating voters via a tax reduction. In reality, the result is the same as with punishing, since non-voting citizens will have to bear an additional tax contribution in comparison. Baréty sees this as a cause to return to the traditional punishment of direct sanctions.⁹⁵

After the Baréty bill, Joseph Barthélemy was assigned to draft a report to the Commission on Universal Suffrage. A Law Professor in Paris and deputy of Gers for the majority centre-right party *Action républicaine et sociale*, Barthélemy had developed a profound interest in obligatory voting. In 1912 he had published a study on the Belgian electoral reform, where he analysed carefully the relevant arguments and implications.⁹⁶ His long and very articulate report became a subject of discussion in the Commission on 9 June 1922 and was accepted in principle with eight votes in favour and two abstentions.

In his report, Barthélemy questions three central aspects of obligatory voting: a) its legitimacy b) its appropriateness and c) the possibility of introducing it.⁹⁷ The theoretical foundations to legitimise obligatory voting are linked to its legal nature as a *function*. This opinion, however, does not for him justify a limitation of universal suffrage, as with the old theories of *function*, but is reconcilable with the democratic principles of general electoral inclusion. Barthélemy supports universal suffrage also against those who blame it as the cause of abstention. To the contrary, he sees obligation as an appropriate means of restoring the genuine intent of universal voting rights. For example, it would prevent the practice of abstention-buying, which had become common in Belgium after secret voting, established in 1913⁹⁸, had rendered the control of voters by ‘*les agents des partis*’ very difficult.⁹⁹ What is more, it would

⁹⁴ H.Rouilleaux-Dugage, *Journal Officiel*, annexe 6549 (22 Jul. 1919), p. 2167

⁹⁵ L.Baréty, *Journal Officiel*, annexe 2734 (7 Jun. 1921), p. 1706

⁹⁶ J.Barthélemy (1912), *L'organisation du suffrage et l'expérience belge*, Paris : Giard & Brière, pp. 475-484

⁹⁷ J.Barthélemy (1922), « Pour le vote obligatoire », Rapport à la Chambre des Députés, 7 juillet 1922, Doc.parl. n.4738, p. 2317, see also *Revue du droit public et de la science politique* 1923, pp. 101-167

⁹⁸ For the history of secret voting see H.Buchstein (2000), *Öffentliche und geheime Stimmabgabe*, Baden-Baden: Nomos

⁹⁹ Barthélemy 1912, p. 480

facilitate an effective updating of electoral rolls that would help distinguish voluntary from involuntary abstentions. The suggested reform in fact targeted those in the first category, who were driven by a growing distrust in representative institutions.

Barthélemy lists a number of contextual political factors that have led to an increase of indifference towards elections. The disappointment from France's deplorable economic situation after World War I, when it was trying to recover from widespread devastation, was the basis of a general discontent with the political leadership. At the same time, old-school monarchists in favour of *ancien regime* ideas did not wish to see representative government function smoothly, a view shared by the new right-wing and fascist movements. But the most pronounced enemy of democracy was the international socialist movement, which had recently triumphed in Russia and was becoming stronger in France. According to Barthélemy, the socialist propaganda against parliamentary institutions had driven many citizens away from the polls. Nevertheless, the socialists were using elections as a means to establish themselves and to this end they voted in large numbers. They also maintained a well-organised party support network and therefore had no interest in obligatory voting.

The fear of socialists explains most of the reasons given by Barthélemy to justify obligatory voting. A widespread indifference by a great number of citizens had led to the predominance of a few protest votes, cast by the dissidents of 'bourgeois democracy'. As a result, abstention was both morally and socially harmful and the urgency of the situation called for active and even unpopular measures, such as punishment for electoral abstention. Thus, when talking about the ideal of a more accurate representation, Barthélemy is searching for a tool to halt the rise of the socialists. An obligation for all to vote would prevent the creation of fake majority governments by political minorities, which he calls a '*miroir faussé*' of public opinion. He underlines the importance of a 'true' representation of the nation, in response to accusations about the bill being partisanly motivated.¹⁰⁰ Not only, he explained, was it uncertain that moderates would benefit from the reform, but there are also some radical and socialist voices that were favouring it. Some of them had

¹⁰⁰ J.Barthélemy 1922, pp. 131-132

already thrown their support behind the reform in the name of improving the transparency of the electoral procedures.¹⁰¹

Barthélemy also shows considerable interest in the educative role of obligatory voting. He explained that voters will learn to appreciate the responsibility that has been bestowed on them with the right to vote. “*Lentement, progressivement, l'électeur en allant à l'urne prendra conscience de la gravité de son rôle. L'obligation sera ainsi un instrument d'éducation unique*”.¹⁰² It will enable the systematic formation of non-partisan opinions on public issues and encourage even the humblest peasant farmer to reflect on the problems of government. Obligation will elevate voting to a noble task, along with military duty, tax payment, jury duty and compulsory education. Of course, it would be much nicer to observe citizens exercising all of these functions and obeying laws without the threat of punishment, but this was not the case in reality. Freedom under the system of obligatory voting would still be preserved since there would be no constraint of voter conscience or their freedom to decide how to vote.

In fact, spontaneous voluntary voting remains a desideratum. Hence, measures to facilitate the exercise of voting, which mainly targeted forced abstentions, could coexist with obligatory voting. They included the existing ones, such as voting in the communes, elections held on non-working days and during seasons when most workers were at home, and secret voting. The introduction of voting by mail, free transport services for voters and especially proportional voting in the future would help bring down abstention rates.

With regard to punishment, Barthélemy makes a distinction between moral and financial sanctions. The first category includes official reprimand, billposting of names, temporary or permanent suspension of the right to vote (*jus suffragit*) and of citizen rights (*jus honorum*). His own proposal calls for all of these with the exception of the reprimand. In between the lighter punishment of billposting and the more serious one of elimination from the electoral rolls, he calls for an electoral levy. These

¹⁰¹ Pierre and Paul, *La Depeche de Toulouse-L'Homme Libre*, 18 Jul. 1921, cited *ibid*.

¹⁰² J.Barthélemy 1922, p. 138

financial sanctions include a fixed sum (5 francs) or an amount that varies according to personal income (5% of personal tax). Among the additional principles that he finds important are the possibility to provide reasons for an abstention before being sentenced, an incremental increase of punishments for repeated abstentions in consecutive elections, the prohibition of corporal punishment, exemption from punishment for elderly voters, the consideration of blank and spoilt votes in the calculation of absolute majorities and facilitating voter transportation to the polls. With these provisions, Barthélemy wanted to create a law that was effective, yet not too strict, against abstention.

Legal theories of voting: Objective or subjective right?

Barthélemy's proposal was very convincing and caused increasing interest in the reform, which entered into juridical discussions. Since the sociological, or positivist, school (as opposed to natural rights theories) was on the rise in France at the time, there was little doubt that voting was regarded primarily as a function and only secondarily as a right.¹⁰³ Esmein, for example, was a strong advocate of the old school of national sovereignty and voting function as the basis for obligatory voting.¹⁰⁴ Already in 1903, the Belgian jurist Pyfferoen claimed that the function doctrine had triumphed within academic scholarship.¹⁰⁵

Hauriou on the other hand insisted that voting was an individual right, based on the liberty of conscience and the 'sovereignty of consent'. However, he admitted that the state had the right to impose on citizens a bilateral obligation to vote in elections, just as representatives had an obligation to care for the smooth functioning of

¹⁰³ This observation is made explicit in R.Carré de Malberg (1920), *Contribution à la théorie générale de l'État*, Paris : Sirey, p. 441 ; however, it has been noted that the outward rejection of natural rights theories by some classic French public-law scholars, notably Duguit, does not preclude an indirect revival of metaphysical doctrines in their work; see J.Charmont, *La renaissance du droit naturel*, Paris: Chauny et Quinsac, pp. 202-203

¹⁰⁴ A.Esmein (1921), *Éléments de droit constitutionnel français et comparé*, t.1, 7ème édition, Paris : Sirey, p. 368

¹⁰⁵ O.Pyfferoen (1903), *L'électorat politique et administratif en Europe*, Paris : Giard et Brière, p. 7

government.¹⁰⁶ In conclusion, voting was for him both a civic duty and a right. Only Anglophone countries, where the political tradition dictated extreme individualism and a general aversion towards constraints, could not tolerate the system.¹⁰⁷

In fact, scholars were then split as to whether the type of right associated with the electorate was objective or subjective. The majority supported the first view, according to which the right to vote was an ‘objective’ reflection of the legal order or of the state as an organism:¹⁰⁸ it was exercised in the name of the state, according to set legal provisions, and could be renounced neither permanently nor temporarily. This view was based on Duguit’s doctrine of ‘social solidarity’ as the source of legitimacy, which he had developed under the influence of Durkheim. Barthélemy and Duez agree that voting belongs to a category of obligatory public rights, i.e. rights that exist not for one’s personal sake, but for the collective interest.¹⁰⁹ This theory provided a perfect theoretical justification for the legal obligation to vote.

The opposite view of subjective rights was supported by the Austrian jurist Georg Jellinek. He advocated that the voter was not only a ‘civil servant’, but also had a subjective public right to be recognised by the state. It was not a recognition of the right to vote, but recognition as a voter, as a person possessing the quality to exercise electoral and other functions.¹¹⁰ It meant that the state, which had a legal personality, recognised that the individual citizen had capacities that were useful for the society. But even in this viewpoint, an obligation to vote was justified if so judged by the state.

Emile Giraud: Elitist support for voluntary voting (1931)

¹⁰⁶ M.Hauriou (1923), *Précis de droit constitutionnel*, Paris : Sirey, pp. 628-631

¹⁰⁷ See also Barthélemy 1922, p. 131

¹⁰⁸ Ibid.; L.Duguit (1923), *Traité de droit constitutionnel*, t.2, 2ème édition, Paris : Fontemoign, pp. 447-453

¹⁰⁹ J.Barthélemy-P.Duez (1926), *Traité élémentaire de droit constitutionnel*, Paris : Dalloz, p. 296

¹¹⁰ G.Jellinek (1914), *Allgemeine Staatslehre*, pp. 422-423: « *Gewiss handelt es sich bei Ausübung des Wahlrechts nicht darum, einen Zettel in die Urne zu legen, sondern um Teilnahme an einem staatlichen Ernennungsakte.* »

In an article published in 1931, Émile Giraud fleshed out these elitist principles. The general idea was that obligatory voting would be harmful for voluntary voters, as they would see their votes compete with those of indifferent citizens.¹¹¹

*“Les abstentionnistes représentent, dans leur ensemble, au point de vue politique, une valeur nulle et [...] leur non-participation à la politique, tant qu’existent les causes qui commandent leur abstention, représente non point une perte pour le pays mais une élimination salutaire, élimination qui a le caractère d’être spontanée et qui, de ce fait, est la seule possible en régime démocratique.”*¹¹²

Giraud’s ideas that people who do not bother to vote are of no value for the country stem from the old elitist theories of voting capacity. He believed that an equality of political rights may be useful for, say, protecting citizens from arbitrary decisions, but it should not translate into an equality of social power and real influence on public affairs. In fact, some voters have a social or financial advantage that can be used to sway public opinion or government decisions.

But most importantly, there are voters, who are morally better equipped, politically more capable, more interested in politics and more strongly motivated to exert an influence on public affairs. These voters, who are motivated by principle and care about the general interest, who possess political knowledge, sound judgment and political passion as well as perseverance and courage, are the ones who are worth consulting on the election of representatives. Conversely, those who are interested only in how to make private gain from political engagement, who ignore social and political issues, who have weak opinions and are largely indifferent towards possible political directions, should be left out of the democratic process.

Yet, although the former have superior qualities to the latter, they often are numerically fewer than the majority. As a result, governments may draw on electoral majorities, but then lack the necessary powers of conviction and readiness to fight

¹¹¹ E.Giraud (1931), « Le vote obligatoire du point de vue des principes et du bon fonctionnement des institutions représentatives », *Revue du droit public et de la science politique en France et à l’étranger*, t.48, pp. 473-495

¹¹² Ibid. p. 475

against opposition forces, which makes them extremely vulnerable to subversive forces like communism. Therefore, governments based on restricted suffrage or minority support sometimes offer more stability and authority than others based on fickle or indifferent majorities. For Giraud, the solution is either to restrict suffrage in countries that include a significant number of disinterested citizens or to maintain voluntary suffrage in more advanced democracies.

Obliging abstentionists to vote goes against the interest of a working democracy: “*en les obligeant à voter, on tend par un artifice à contrarier le jeu normal des forces politiques et à rendre plus aléatoire ce résultat essentiel qui est que la majorité numérique représente la plus grande force politique*”.¹¹³ Voters who tend to abstain do not represent a real political force and, therefore, introducing obligatory voting is like rigging the elections. The same view is reflected by historian Alphonse Aulard, who was published in the radical-socialist journal *L'Œuvre*. Aulard opposes obligatory voting as anti-democratic, a violation of the citizen’s conscience, and an impediment to the development of a natural elite and to the progress of democracy: “*Gardons-nous de forcer, au détriment du progrès, les gens qui ne se sentent pas citoyens, à faire acte de citoyens*”.¹¹⁴ Citizens who do not bother to vote are by means of political selection excluded from this elite.

Moreover, to prove that the opinions of abstainers are worthless, Giraud delineates an anatomy of abstention. There are different causes of abstention, he writes, most of which do not deserve a specific reform. Abstentions forced by valid reasons, like illness, can be tackled by introducing mail voting, and those caused by dissatisfaction with all registered candidates can be addressed by proportionalisation of the electoral system.

In contrast, there is nothing to be done in the case of the lazy voter, who does not represent a living political force in the country in any case. Indifferent voters are also unimportant. Giraud rejects the idea that this group includes voters of moderate persuasions, who traditionally have little passion; “*autrement, mon chien qui ronge son*

¹¹³ Ibid. p. 487

¹¹⁴ *Le Gaulois*, 10 Oct. 1928, no.18632, p. 4

os sans s'inquiéter des luttes et des intrigues politiques serait le symbole de la modération."¹¹⁵ The third group consists of demagogues, both of the Left and of the Right, who have excessive and naïve claims about the political establishment and whose opinions are therefore not worth knowing. Finally, the dispirited citizens who are put off by animated political conflict have opinions that are too weak to be of any use for the functioning of representative institutions. For Giraud, the best solution against abstention is not to eliminate it by force, but to develop a social sensibility and to repair the damaged image of politics by transforming its principles and methods.¹¹⁶

Giraud's views call to mind another early advocate of elitism, albeit with a different background, was the German sociologist Robert Michels, whose French translation of *La Démocratie et les partis politiques* appeared in 1912. Michels' ideas were based on a scientific analysis of empirical facts, with no pretensions to reflecting ideological viewpoints. This however does not reduce the political value of his 'iron law of oligarchy'. Michels argued that bureaucratisation of all social organisations leads inevitably to the creation of a closed caste of leaders, who possess all the technical competence and efficiency that was needed in order to achieve the organisation's goals. Over the course of time, a change in the leaders' material and social circumstances affected their consciousness and transformed them into a conservative elite with no sympathy for the masses. This was true even for socialist parties, despite their claims to act in a democratic spirit.

Michels argued that this process of oligarchization was fed by uncritical adoration from the pathetic masses¹¹⁷. He claimed that people had an atavistic tendency to develop a "*cult of veneration*" (*Verehrungsbedürfnis*) for individuals who, in their eyes, are the incarnation of great ideals. At the same time, they are completely apathetic towards public life. In Michels' own words:

"There is no exaggeration in the assertion that among the citizens who enjoy political rights the number of those who have a lively interest in public affairs is insignificant.

¹¹⁵ Ibid. p. 492

¹¹⁶ Ibid. p. 495

¹¹⁷ J.V.Femia (2001), *Against the Masses*, Oxford: Oxford University Press, p. 94

In the majority of human beings the sense of an intimate relationship between the good of the individual and the good of the collectivity is but little developed.”¹¹⁸

What is more, governed by the rules of crowd psychology, the masses have “*an immense need for direction and guidance*”.¹¹⁹ Large crowds are incapable of engaging in rational deliberations and are susceptible to emotional reactions. “*The individual disappears in the multitude, and therewith disappears also personality and sense of responsibility*”.¹²⁰ As a result of the opposition between mass and elite psychology, the masses have a ‘universal’ incompetence in political matters, which justifies their domination by leaders with expertise.¹²¹ The masses’ lack of interest, knowledge and responsibility prevents them from making informed and independent judgments on decisive questions. Therefore, the attainment of democracy, defined as direct self-government, is as futile as the metamorphosis of democracy into oligarchy is natural. In short, Michels’ study can be seen as a scientific treatise against the possibility of democratic rule. Its anti-democratic perspective was further confirmed when, soon after the book’s publication, its author joined the Italian fascist movement.

Concluding note

At the turn of the 19th century there was a general proliferation of ideas that challenged the value of and prospects for mass democracy. Those who strongly adhered to parliamentarism responded to these challenges by turning to reforms to increase the legitimacy of democratic government. A legal obligation to vote offered a clean counterproposal to the opposition calls against electoral systems of government. In particular, the obligation was seen to hold the promise of strengthening democratic institutions and demonstrating the ideological and practical commitment of republican forces to the virtues of representative institutions and mass participation.

¹¹⁸ R.Michels (1915), *Political Parties*, New York: Heart’s International Library, p. 49

¹¹⁹ *Ibid.* p. 53

¹²⁰ *Ibid.* p. 25

¹²¹ *Ibid.* pp. 86-90

However, little philosophical debate took place with regard to the inherent value and meaning of suffrage and of parliamentarism. Whereas opponents of democracy went to great lengths to analyse the shortcomings of the current system and propose alternatives, republicans tried to counter by suggesting improvements or corrections to the existing political structures. This lack of foundational thinking in favour of democracy may have been the source of its weakness and its temporary, yet disastrous, intellectual defeat by more robust theories.

Chapter 5: The establishment of compulsory voting in Belgium (1858-1948)

Belgium's pioneering role as an electoral democracy in the late nineteenth century is widely known. Already in 1894, the French politician Antonin Lefèvre-Pontalis had lauded it for being in 1877 one of the first countries to introduce the secret ballot and for managing in 1893 to make a gradual transfer to universal suffrage with the use of plural votes.¹ Belgium was also the first nation to adopt party-list proportional representation in 1899, while the Belgian Victor d'Hondt devised the most common method worldwide today for electoral seat allocation.

Another Belgian political innovation was the system of obligatory voting, first used on a national scale there in 1893. The idea of making electoral participation a legal requirement had already appeared not only in France and Switzerland, but also in the American colonies in preceding years. Yet, the French parliamentary discussions in the 1870s and 1880s did not conclude with a voting reform. And the laws in Switzerland were not applied to the whole confederation, but only to some of the cantons.² In the US, mandatory voting legislation appeared only in some states before being wiped out completely by the War of Independence.³ Without underestimating the influence exerted by these countries, Belgium may indeed be considered the first case where voting in national elections became a constitutionally entrenched obligation.⁴ In order to understand the rationale underlying this principle, it is essential to trace the path to its introduction.

¹ A.Lefèvre-Pontalis (1902), *Les élections en Europe à la fin du XIXe siècle*, Paris : Plon-Nourrit et Cie, pp. 232-233

² S.Deploige, "Le vote obligatoire en Suisse", *Revue Générale*, 58/3, pp. 467-485, 1893

³ H.Abraham, *Compulsory Voting: Its Practice and Theory*, PhD Dissertation, University of Pennsylvania, Philadelphia, 1952, pp. 107-118

⁴ What more, contrary to other countries like the Netherlands, Austria etc. that had compulsory voting and abolished it, Belgium re-stated later the voting obligation in two laws from 1921 and 1932 for provincial and communal elections, respectively, and in 1989 for European Parliament elections.

Fighting electoral fraud and protecting voting ethics (1858-65)

Belgium's first constitution after independence, adopted in 1831, was an amalgam of liberal and conservative elements, which foreshadowed the reforms that followed. In particular, it combined fundamental rights and the separation of powers, on the one hand, with high property requirements for voter eligibility on the other.⁵ Only the success of universal suffrage in France and Switzerland in 1848 helped to fix the census threshold at the constitutional minimum of 20 florins.⁶ At that time, the Liberals broke away from the Unionist coalition with the Catholics, which had lasted from 1831 to 1847, and formed an independent government. From then on, the political landscape was split between these two large party blocs that governed the country interchangeably for the whole second half of the nineteenth century. The fierce rivalry between Belgian Catholics and Liberals was a major reason for the frequent changes in electoral regulations during that time.

It seems that a forerunner to compulsory voting in Belgium appeared already in 1858 in the form of a proposal by Catholic ex-Prime Minister Pieter De Decker. Its main aim was to fight electoral fraud.⁷ Elections at the time were held in the capital of the 'arrondissement', which necessitated a rather long and costly journey for most electors. The need to cover these costs made many vulnerable to vote buying. Instead of abandoning voters from the countryside to rapacious landlords, the state was urged to encourage and compensate these voters' efforts to attend the polls. Thus, De Decker suggested introducing a legal obligation to vote and a reimbursement of voters' travelling expenses.⁸ In fact, he argued that voters had to be treated like the members of a jury, who received a compensation for their service. He equated electoral obligation with jury duty or service in the civil guard. In this context, the proposal was that every voter who failed to vote would lose their travelling allowance.

⁵ X.Mabille, *Histoire Politique de la Belgique*, Brussels: CRISP, 1992, pp. 115-118

⁶ R.Van Eenoo, "Systèmes électoraux et élections, 1830-1914", in Gerard E. et al, *Histoire de la Chambre des Représentants de Belgique 1830-2002*, Bruxelles: Chambre des représentants, 2003, pp. 49-61 ; p. 55-56

⁷ L.Dupriez, *L'organisation du suffrage universel en Belgique*, Paris 1901, p. 116

⁸ De Decker, *Annales Parlementaires, Séance du 9 février 1858*, pp. 240-241

De Decker's proposal received no follow-up, although the country was increasingly preoccupied about political abstention. An excerpt from the journal *Indépendance Belge* from 19 June 1861 sounded a note of warning about this 'dangerous' phenomenon:

« Les élections communales qui ont eu lieu hier à Bruxelles rendent beaucoup d'actualité à des réflexions que nous avons déjà faites à plusieurs reprises sur les inconvénients, les dangers même de l'étrange indifférence apportée par les corps électoral bruxellois dans l'exercice de son droit de vote toutes les fois qu'une lutte officielle n'est pas engagée entre deux partis. Nous regrettons de devoir le dire à nos concitoyens: une telle conduite prouve peu en faveur de leur sagacité et de leur maturité politique ».

In other words, indifference towards elections was a sign of the immaturity of the people, who 'needed' a political or religious crisis to draw them to the polls. In the communal elections of 1861, only 560 out of at least 6,000 eligible voters showed up in Brussels, whereas in Ghent in 1857, after the introduction of a controversial law on convents, the turnout was 3,000 out of 3,000.⁹ The act of abstaining gave the opportunity to those who did vote to determine the electoral majority, even if these voters were very few in number. According to the Liberal Prime Minister Walthère Frère-Orban *« De toutes manières de mal faire, il n'y en a peut-être pas de plus fâcheuse et de plus condamnable que celle qui consiste à laisser faire le mal en s'abstenant »*.¹⁰ In fact, most political forces seemed to agree that abstention was deplorable from a moral and political point of view, although this consensus did not create an agreement on punishing abstention.

A few years later, the Amsterdam Congress of the *Association Internationale pour le Progrès des Sciences Sociales* pronounced itself in favour of obligatory voting. Voters were portrayed as needing protection against forced abstention, to secure *« l'expression de la libre et sincère manifestation d'un vote consciencieux »*.¹¹ The

⁹ J. Barthélemy, *L'organisation du suffrage et l'expérience belge*, Paris : Giard-Brière 1912, p. 476

¹⁰ Cited by Barthélemy, *ibid.* p. 478

¹¹ *Annales de l'Association Internationale pour le Progrès des Sciences Sociales*, Troisième Session, Congrès d'Amsterdam, Bruxelles/Paris : Bols-Wittouck/Guillaumin 1865, pp. 56-57

obligation to participate was seen as a means of, in the words of the previous De Decker proposal, stopping influential people from using their power to force abstention on voters who were dependent on them. Obligatory voting was thus understood at that time as a measure to counter acts of pressure and intimidation, not as a solution against the dangers of abstention due to indifference. A law against electoral fraud introduced two years later¹² also shows that the main concern was indeed nothing else than to safeguard the independence of the vote.

In any case, compulsory voting would steer a unified national representation away from partisan divisions. With the developments in the United States in mind, parties were indeed seen as evil, egoistic formations that only served to divide the nation and undermine its genuine representation.¹³ According to Dognée-Devilleers, « *les hommes intelligents qui savent ce que c'est qu'un devoir public, l'exerceraient librement et ne seraient plus les esclaves des coteries qui menacent de corrompre la représentation nationale* ». ¹⁴ Legal enforcement of voting would create a direct link between the citizens and the state and counterbalance the divisive effect of political parties. Besides, genius and liberty were regarded as springing from the nation as a whole, rather than from individual expressions. In this sense, obligatory voting was an extension, or enforcement, of the criterion of electoral capacity. Understanding the duty-aspect of voting demonstrated voters' intellectual qualities. Those who did not realise this sense of duty did not merit the right to vote. Hence, abstainers should be deprived of their rights for a given period or, if necessary, removed permanently from the electoral rolls.

A very fierce objection to legal punishment for abstention came from the founder of the *Association*, liberal politician Gustave Rolin-Jaequemyns. He, first of all, agreed in principle that voting was a mandate, a real mission, and not a simple right equivalent to the right of property, the use of which was up to individual discretion. Yet, he very strongly disagreed with the establishment of a legal obligation to vote.

¹² L.Crombez, « Fraudes en matière électorale », *Rapport fait au nom de la section centrale, Doc.Parl no.135*, Chambre des Représentants, Séance de 10 avril 1867. A similar, much softer, law was introduced also in 1843.

¹³ R.Hofstadter, *The idea of a party system: the rise of legitimate opposition in the United States 1780-1840*, Berkeley/LA: University of California Press 1969

¹⁴ *Annales de l'Association Internationale pour le Progrès des Sciences Sociales* 1865, p. 142

His main line of argument stated that it was impossible to force the conscience of the voter. He re-described « *le devoir de voter, qui ne consiste point uniquement, comme on semble le croire, dans la présence matérielle de l'électeur au scrutin, mais dans l'application qu'il fait de son intelligence à la formation d'un choix raisonnable* ». ¹⁵ Not only was it extremely difficult to force voters to make up their minds, but it was all the more dangerous to institute a formal obligation to participate in the polls, since that would have the opposite result, namely, create voters who do not take voting seriously and are more susceptible to flippancy or subversion. Moreover, there were cases when citizens consciously decided to abstain, for example, when they could in good conscience support no candidate, or believed their candidate had only minimal chances to win. Sometimes abstention was indeed a preferred strategy for candidates and their supporters who wanted to spare themselves a political humiliation. Hence, for voters who consciously chose to abstain, legal punishment represented a violation of their conscience.

The emphasis on the processes involved in voting also explained why the analogy with jury duty was unconvincing. According to Rolin-Jaequemyns, participation in juries and in elections differed fundamentally. Jury members were obliged to be materially present not only when issuing the verdict, but also in the preceding debates, which helped them form an opinion about the case. Voters in elections were not, on the contrary, asked to judge an issue about which they were informed in advance, but to make a choice between candidates, whose existence they may have been ignorant of until that moment. « *Lorsqu'on exige son vote, on veut sa présence matérielle, non aux débats, mais à la décision, sans même s'inquiéter de savoir si les faits de la cause lui ont, ou non, passé sous les yeux* ». ¹⁶ The hidden purpose of the reform, according to Rolin-Jaequemyns, was 'to transform indifferent citizens into patriots with the help of the gendarmerie'. The intention of the reform resembled the effort to create Christians through the practice of the inquisition, or to convert somebody to Catholicism by regularly taking them to the mass. For most Liberals, these projects seemed indeed pretentious, 'absurd' and 'exorbitant'. ¹⁷

¹⁵ G.Rolin-Jaequemyns (1865), *De la Réforme Électorale*, Bruxelles : Muquardt, p. 31

¹⁶ Ibid. p. 32

¹⁷ Ibid. p. 30

Indeed, the core members of a Liberal parliament unanimously defeated obligatory voting during the 1865-67 electoral reform aimed at decreasing electoral fraud.¹⁸ Yet, the rejection of the idea was mainly inspired by political tactics. In reality, Liberals were in favour of mechanisms against electoral fraud, and some liberal journals, like the *Etoile Belge*, had openly lamented the failure to include it in the reform.¹⁹ Yet, the conclusion of the session was negative.

*«Il n'existe en Belgique aucun motif légitime pour imposer légalement l'obligation du vote. Laissons faire la liberté; ayons confiance en elle; elle corrigera, bien mieux que toutes les lois possibles, les inconvénients résultant de l'abstention, Rapportons-nous-en à l'esprit public; aux luttes des partis politiques; à ces compétitions qui sont de l'essence des gouvernements représentatifs; elles auront toujours assez de puissance pour amener les électeurs au scrutin, sans avoir besoin de recourir au gendarme.»*²⁰

In other words, the main objection was based on evidence that wherever a serious contest took place, voters tended to take part in the elections anyway.²¹ It was only natural for them to be unmotivated in one-party contests or when one party had a clear advantage over others. Excitement and eagerness to win an election were the best guarantees for high voter turnouts. Hence, it was not necessary to use the forces of public order to force voters to the polls, as long as party struggles remained competitive.

Another way to reduce undue influence on voters was to remunerate them or to move the voting centres closer, from the arrondissements to the communes. The latter would obviate the need to defray travel expenses and prevent the bribery of poor countryside voters. Like obligatory voting, neither of these solutions succeeded.

¹⁸ L.Crombez, « Fraudes en matière électorale », *Rapport fait au nom de la section centrale, Doc.Parl n.203, Chambre des Représentants, Séance de 2 juin 1865*, pp. 97-101

¹⁹ Daily Brussels newspaper 1850-1940, the organ of the family of Orleans, who was evicted from France in 1848; bought by Denis-Joseph Madoux in 1871 and owned later by the Marquet family until 1940

²⁰ Crombez 1865, p. 100

²¹ *Annales Parlementaires Séance du 2 juin 1865 ; Annales Parlementaires Séance du 17 mai 1867*, p. 1037

However, electoral fraud continued to concern the authorities and, ten years later, in 1877, the Belgians established the uniform ballot and the secret ballot as additional measures against the manipulation of voters.

A discussion took again place within the Senate in 1871, when Senator Pirmez accused the Liberals of opposing the reform because of narrow partisan interests.²² Abstention did benefit parties with small but loyal support bases and was harming those that drew on moderate constituencies. To conceal the political advantages of compulsory voting, he said, an increased focus was given to philosophical arguments developed outside Belgium. John Stuart Mill was frequently quoted as a representative of the idea of voting duty in England and the French Eugène Delattre had also defended it in his work *Devoirs du Suffrage Universel*.²³ Moreover, compulsory voting had been recently suggested by Albert Gloss as an amendment to the Constitution.²⁴ The input of these views from abroad had been significant enough, he felt, to provide legitimacy to an issue that was politically too sensitive and for which there were hardly any institutional precedents within Belgium.

The road to democratic reforms in the 1880s

During the 1870s the idea lost ground and only emerged again in 1881. New interest in compulsory voting arose parallel to the politically related demands for universal suffrage. The reform switched from being a right-wing-owned issue towards one of centre-left progressive liberals and socialists. This shift was exemplified by Evenepoel Bouvier, a member of the Belgian Parliament, who on the one hand supported obligation as a complement of restricted suffrage, while on the other he considered non-voters's interests as part of the of national interest.

Bouvier argued that eligible voters who abstained were in fact committing an offence primarily against disenfranchised citizens.

²² *Annales du Senat, Séance du 27 mai 1871*, p. 236

²³ E. Delattre, *Devoirs du Suffrage Universel*, Paris : Pagnerre 1863

²⁴ A. Gloss, *Das Leben in den Vereinigten Staaten*, T. II, Leipzig 1864, p. 578

*“Ceux-ci, en votant pour eux-mêmes, votent aussi, et davantage encore, pour les nombreux non-électeurs, leurs mandants légaux, dont ils sont réputés exprimer fidèlement les volontés. Le droit de suffrage n’est donc pas une propriété, mais un dépôt, dont il n’est pas permis de se dépouiller.”*²⁵

Voters had a responsibility towards the citizens who did not have electoral rights. The right to vote was not a possession, but something entrusted to them that could be revoked at any time by the state should it deem necessary. The concept of voting as a resource that should be used to address the needs of the disfranchised became very popular in a country with strict census requirements for voters. Voting was an act of constituting public power; being part of this procedure was an honourable entitlement that one could neither give up nor transfer to others. Consequently, voters who abstained from elections did not merit the title of voter.

Discretionary voting and the practice of abstention hindered the full expression of the national will. It was the source of dispute and disrespect regarding elections, *«un vote insignifiant, ridicule, réduit à une expression relativement infinitésimale»*.²⁶ In contrast, obligatory voting would guarantee *«l’expression la plus parfaite et la plus sincère de la volonté du corps électoral »*.²⁷ For it would express the totality of public opinion, which was the source of national will. Thus, obligatory voting was justified as an enhancement to the process of representation.

The voting obligation was also a matter of safeguarding clean elections. The voluntary nature of the vote had in the past allowed tiny parties to win elections by mobilising a small yet loyal minority and engaging in tactical manoeuvres. Again, Bouvier echoed the fear of the Americanisation of Belgian politics through the domination of devious parties. It was an obligation towards those without voting rights to protect the state from being taken over through such duplicitous tricks. *“On leur impose des lois, des charges et des sacrifices et ils ne pourraient pas se plaindre*

²⁵ E. Bouvier, « Du Vote Obligatoire en Belgique », *Revue de Belgique* XIII, 5, t.38, 1881, p. 139

²⁶ Ibid.

²⁷ Ibid. p. 144

*si ceux qui les y soumettent ne sont les élus que d'une poignée d'électeurs, que d'une majorité d'accident, de surprise et de hasard?"*²⁸ If voting was compulsory, these reckless methods would disappear and only candidates with clear majorities and democratic intentions would prevail.

Despite appearances, the obligation to vote did not at all imply a subordination of individual liberty. This was safeguarded by the possibility to cast a spoilt or invalid ballot. "*Voter, c'est élire, c'est faire comprendre aussi qu'on ne veut pas élire.*"²⁹ Blank ballots registered the degree of disapproval and suspicion against candidates and often expressed reaction and protest, especially when in great numbers. Therefore, if anything, it was important to look carefully into the issue of spoilt votes after each election. However, a legally binding requirement to vote would educate voters in voting intelligently, since it would emphasise the importance of valid participation in elections.

The contribution of compulsory voting to a more 'democratic' expression of the national will explains its inclusion in the political programme of the Progressive Party in 1887 (Article IX).³⁰ Progressive Liberals, led by Paul Janson, had just broken away from the Liberal Party and adopted a radical agenda that favoured social reforms, contrary to doctrinaire Liberals, who supported a laissez-faire capitalism. The creation of the Belgian Workers' Party (*Parti Ouvrier Belge*) in 1885 had obviously played an important role in their decision to join the struggle for democratic concessions. Under the influence of the Labour Party's insistence on a more democratic electoral system and the extension of suffrage³¹, the Progressives tried to draw lessons from the Swiss institutions.³² Their interest in compulsory voting was in fact a direct result of a conspicuous admiration for Swiss democracy.

In more realist terms, the adoption of compulsory voting by the progressives was the result of two converging tendencies. On one hand, the workers from Louvain,

²⁸ Ibid. p. 140

²⁹ Ibid. p. 142

³⁰ *Congrès Libéral progressiste de Belgique. Séances des 29 et 30 mai 1887*, Bruxelles 1887, pp. 26-27

³¹ Van Eenoo 2003, pp. 57-59

³² Dupriez 1901, p. 117

represented by Peemans, wanted a weapon against forced abstentions. On the other hand, Van Dyck, an agent of the progressives from Wavre, expressed the latter's interest in fighting political apathy and in restoring equality between candidates, by minimising the differences in their electoral expenses for mobilising voters. As we shall see, the same issues became central arguments in the discussions on obligatory voting during the constitutional reform six years later.

In the meantime, the gradual abolishment of restricted suffrage after 1870 had led to conceptual changes that account for the positive reception of obligatory universal voting. Census requirements had been decreased to their constitutional minimum in 1871,³³ and in 1883 new voters were enfranchised, based on their educational and professional capacity, to take part in communal and regional elections. The concept of capacity as such was under dispute by the socialists, who demanded the abolishment of voting restrictions. The progressive leader Paul Janson was also in favour of universal suffrage, though one that excluded women, minors, foreigners and some other groups. He refused the natural rights theory and conceived voting as a social right, exercised in the interest not of the voter, but of the whole society, which could set the conditions for granting the right. Furthermore, Catholics were not quite ready to abandon their belief that the capacity to vote demanded more than just being able to read and write.

In the struggle between these political groups, there was a need for redefining electoral capacity. One possible alternative was to link the vote with « *le Catéchisme politique du Citoyen [...] avoir une idée plus ou moins précise des intérêts et des besoins actuels de la collectivité, et une certaine connaissance de la personnalité du candidat à élire* ». ³⁴ But political knowledge was an ambiguous criterion of electoral capacity. It was not as fixed and formal as college degrees or a tax threshold, while no clear measurement existed yet to replace these. The vagueness regarding voter eligibility was replaced by the more straightforward criteria involving voter education, namely, by public instruction at schools and through obligatory universal suffrage.

³³ P.Magnette-D.Luyten, "L'idée du parlementarisme en Belgique", in E.Gerard et al, 2003, p. 23

³⁴ P.Combes, *Les Systèmes de Votation des Peuples Libres*, Verviers : Gilon 1885, pp. 18-19

The 1893 parliamentary debate

The search for a republican education soon brought the topic to the attention of the plenary session of the Belgian Chamber of Representatives. The parliament was at the time composed of Catholics (papist and moderate) and Liberals (progressive and doctrinaire). The two parties had monopolised Belgian political life from the foundation of the country in 1830 until 1893, when the Workers' Party joined parliament. After the state of Unionism, from 1830 to 1847, the Liberals were in power for the most time until 1884,³⁵ when strife over education caused a change in the tide and brought the Catholics into government from 1884 until 1914. Hence, in 1890, it was a Catholic majority Chamber that took first note of obligatory voting and ordered reports from Senate and Chamber commissions. Since the latter was divided on the issue, discussions were discontinued. During the first round of constitutional reform talks (1891-1892), mandatory voting was not mentioned but in private discussions.

On 31 December 1892, a letter with reform suggestions by Catholic Prime Minister Auguste Beernaert to the Chamber of Representatives brought the issue back to the parliamentary agenda. Yet, the first result was again negative: on 28 January 1893 the Chamber rejected it in principle with 7 votes in favour, 7 against and 3 abstentions.³⁶ It seemed that the idea was not entirely unwelcome; however, the novelty of the reform and the difficulties of organising it in practice prevented the legislators from including it in the constitutional texts. The Senate was much more positive and did in fact support the idea, with 15 votes in favour and 1 against. Thus, a public discussion on the matter was very likely to occur in the following months.

In the meantime, the most crucial issue of the constitutional reform underway seemed to be universal suffrage. In the second half of the nineteenth century, the discussion on universal versus limited suffrage had become a fundamental question throughout

³⁵ Except 1854-57 and 1870-78.

³⁶ Dupriez 1901, p. 118

Europe. The liberal movements of 1848 had challenged the conservative regimes, and the demands to extend voting rights to the poorer classes resounded louder than ever. In Belgium too, after the 1860s the suffrage question dominated political life and became an apple of discord between the Liberals and the Catholics until its adoption. The new constitution was the result of a general strike in April 1893, used as a last resort to break the resistance of the Catholics and the doctrinaire Liberals to make any concessions to the working class. Finally, a compromise between Catholics and Labour was reached, brokered by the leader of the *progressistes* Paul Janson.³⁷ During the negotiations, Labour demanded the extension of suffrage, while the conservative Catholics tried to preserve the status quo. At the end, a balance was struck by introducing universal suffrage and moderating it with plural voting restrictions.

Indeed, plural voting was a way to preserve the inequalities established previously through census suffrage. It was a system advocated by John Stuart Mill³⁸ and, in a different form, already in use in countries like Prussia. The new system gave “*supplementary voting power to the better qualified members of the community*” to avoid a situation where “*the more responsible and sounder classes of the community, irrespective of social standing, might be swamped, electorally at least, by the sudden rush of radical, socialist and collectivist voters*”.³⁹ In other words, the benefits of the old census-based electors were being retained by giving extra votes to certain groups of citizens.

Thus, even though Article 47 did give the vote to all males older than 25, one to two supplementary votes were granted to some voters based on economic standing, family status, education and professional position.⁴⁰ As a result, a total of 1.4 million voters participated in the 1899-1900 elections, (the number had been 135,000 previously); of these, there were 901,000 voters with 1 vote, 313,000 with 2 votes (or 626,000 votes)

³⁷ E.Witte, *Political History of Belgium from 1830 Onwards*, Brussels: VUB 2001, pp. 85-91

³⁸ J.S.Mill, *Thoughts on Parliamentary Reform*, London: John Parker 1859, pp. 22-24

³⁹ A.Nerincx, “Compulsory Voting in Belgium”, *Annals of the American Academy of Political Science*, Vol.18, September 1901, pp. 87-90

⁴⁰ For a detailed analysis see P.Errera, *Traité de droit public belge*, Paris, Giard-Brière 1909, pp. 139-146

and 237,000 with 3 votes (711,000 votes).⁴¹ Hence, although the number of voters possessing two or three votes was smaller than those having only one, the former were still able to clearly determine the electoral result.

The political context of the debate

After deciding on universal and plural voting on 18 April 1893, the constitutional discussions turned to the principle of voting obligation. For two days (30-31 May), Catholics and Liberals debated Article 48, the obligatory voting clause of the new Constitution. With some modifications, the article was ratified a day later. In the meantime, newspapers of all political stripes had warmed to the idea.⁴²

The main rationale behind the bill was to avoid the drop in turnouts that was expected to follow the adoption of universal suffrage, as had been witnessed in France. Of course, both the supporters and opponents of obligatory participation acknowledged that, due to the strong party system and other reasons, abstention rates never reached an excessive high in Belgium, like they did in other European countries.⁴³ The abstention rate was 16% in the 1892 elections, when in France it had reached on average of 24% and in Germany, Spain, Italy and the US at least 30%.⁴⁴ Instead of easing their fears, this fact made the government defend obligatory voting even more fervently, as a measure to keep the rates low even after suffrage was expanded. In addition, the methods of vote-buying that had been used to get voters to the polls — which included transportation, food, money or job promises — were no longer affordable after the enlargement of the electorate.⁴⁵ Thus, the introduction of

⁴¹ J. Stengers, “Histoire de la législation électorale en Belgique”, in S. Noiret, *Political Strategies and Electoral Reforms: Origins of Voting Systems in Europe in the 19th and 20th Centuries*. Baden-Baden: Nomos 1990, p. 85

⁴² Coutant 1898, p. 150. Examples of sympathising papers mentioned by Beernaert are : *Precurseur*, *Independence*, *Reforme*, *Chronique*, *Journal de Mons*, *Journal de Liège*, *Journal de Bruxelles*, *Patriote*, *Bien Public*, *Impartial*, *Patri*, see Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1541

⁴³ *Annales Parlementaires, Séance du 30 mai 1893*, pp. 1541, 1552

⁴⁴ Dupriez 1901, pp. 130, 147-152; Quiri 1908, p. 123; De Haerne 1892, pp. 30-31

⁴⁵ Barthélemy 1912, p. 477; Stengers 1990, p. 105

obligatory voting was an institutional tool for preventing the decrease in turnout that universal suffrage was expected to bring.

From a partisan point of view, the Catholics wanted to make sure that the conservative bourgeoisie would not react to the enlargement of the electorate with massive abstention. Compulsory voting was considered the best way to protect political stability from unpredictable changes of electoral participation. In reality, the Catholics were mainly targeting the Belgian Labour Party, which had been founded in 1885. Their fear was that the socialists were like an internal enemy that might take the parliament by storm, as had already occurred in France, Britain and Germany. Socialist supporters were generally considered enthusiastic voters and would attend the polls even without being legally required to do so.

It was generally believed that electoral abstention might “*leave the government of the country and the power of the legislature completely in the hands of the professional politicians and their disreputable supporters*”.⁴⁶ On the other hand, there was a belief that abstention would mainly harm the conservative parliamentary bloc, because abstaining voters seemed to come mostly from their base. Beernaert named two French cities where the political leadership had been taken over by socialists due to the lack of full turnout in local elections. Therefore, at the end of the debate, Beernaert openly described compulsory voting as an ‘excellent conservative innovation’.

Indeed, in the parliamentary debate of 30-31 May 1893, the Catholics argued that, with the abolition of the census system, the 150,000 old voters might feel it too condescending to go to the polls along with the one and a half million new voters of low social and educational status. Mass participation made the individual voter feel powerless and unimportant. It was thought that participation rates might fall even more, because the new electorate would be composed not only of the enlightened bourgeoisie, who had maintained relatively high participation rates in Belgium due to

⁴⁶ Nerinx 1901, p. 88

their high civic consciousness and firm political convictions, but also of ignorant farmers and workers.⁴⁷

All of this was adduced from observing the example of France, where four decades after introducing universal suffrage in 1848, less than half of the voters were showing up at the polls.⁴⁸ Hence, the extension of suffrage as such created more voters, but also more abstainers. A solution was needed to prevent the increase of abstention, and obligatory voting seemed very suitable to this aim. Moreover, contingent factors surrounding the reform on obligatory voting led one commentator to describe it as a 'corrective, temporary, uncertain and tentative' solution.⁴⁹

In addition, the Catholics hoped that obligatory voting would bring out the religious peasant vote.⁵⁰ According to the ideological and socio-economic cleavages of the time, Belgian Catholics were drawing their electorship from propriety owners and industrial capitalists, as well as from the religiously inclined rural zones. After the adoption of a social agenda by the Church — with the famous Encyclical *Rerum Novarum* of Pope Leon XIII on Capital and Labour (1891) — they also reached out to workers through the formation of Christian trade unions. Thus, the Catholic Party became a political force that drew on more than one social class.⁵¹ Conversely, Liberals and Socialists expressed the anti-clerical forces of the bourgeoisie and the working classes, respectively. In this context, it makes sense why the Catholics were interested in peasant as well as working-class voters.

But members of the centre-left also had reasons to support compulsory voting. They thought it would encourage participation of the poorer citizens in general and especially the working class. In particular, the radicals feared that powerful local authorities, captains of industry, business leaders and public sector supervisors would

⁴⁷ To some extent, this view contradicts the statement that abstainers come mainly from the bourgeoisie, but it is maintained by the fact that pre-1893 participation rates in Belgium were higher than in other European countries, N.Quiri, *Le vote obligatoire*, Paris 1908, p. 120

⁴⁸ Beernaert, Woeste and Bergé, *Annales Parlementaires Séance du 30 et 31 mai 1893*, pp. 1540-1541, 1552, 1557

⁴⁹ A.Adolphe, *Le vote obligatoire*, Paris 1901, p. 101

⁵⁰ P.Delwit, *La vie politique en Belgique de 1830 à nos jours*, Bruxelles : Editions de l'Université de Bruxelles 2010, p. 63

⁵¹ Mabile 1986, pp. 175-178

use threats or intimidation to obstruct their employees from voting if they suspected that they would not support a candidate of their liking.⁵² Liberals had long fought for the prevention of electoral fraud; they had described obligatory voting as «*un moyen d'éviter la pression qui s'exerce sur l'électeur pour obtenir son abstention et obtenir qu'il reste chez lui au lieu d'aller voter quand il ne partage pas l'opinion de celui qui lui fait une violence morale*».⁵³ In fact, they suspected that, after the establishment of secret voting in 1877, 'forced abstention' of undecided voters would replace the earlier practice of controlling votes through marked ballots. In particular, progressives, who were at the time the parliamentary expression of radicals and workers, wanted to protect working-class voters from their bosses, just as the Catholics tried to guard poor voters in Flanders from the *Franquillons*, i.e. the French-speaking nobility that dominated the local economy. Obligatory voting seemed the best solution to such misconduct.

Thus, compulsory voting accommodated both conservative and progressive interests and, as such, it created a common ground for its adoption. From the Catholics, the protagonist in the debate was Auguste Beernaert, the Prime Minister and Minister of Finances from 1884 to 1894.⁵⁴ He was supported by Progressive Liberals (Bergé) and Catholics (Rosseeuw, De Montpellier, De Sadeleer), though some Catholics expressed opposition, most prominently Charles Woeste, president of the *Fédération des Associations et des Cercles Catholiques*, who represented a less liberal wing than Beernaert inside the Catholic Party.⁵⁵ The rest of the dissenting voices came from the doctrinaire Liberals, such as Charles Graux and Léon Vanderkindere.

One crucial difference between the Catholic and the Liberal opponents of the bill was that the latter had also opposed universal suffrage, whereas Woeste had supported it

⁵² Beernaert, *Annales Parlementaires Séance du 30 mai 1893*, p. 1540

⁵³ Bockstael quoting Bergé, *Annales Parlementaires, Séance du 8 mai 1877*, p. 709

⁵⁴ R. Demoulin, « Beernaert, Auguste », *Biographie Nationale*, Brussel: Académie Royale des Sciences, des Lettres et des Beaux Arts de Belgique, 1866-1986, tome 33 (1965), pp. 69-105

⁵⁵ Woeste was a traditional conservative, member of cabinet of the previous Catholic PM who was replaced by Beernaert in 1884 after liberal protests; he was supporting bourgeois and confessional ideas and clashed with the liberals on the question of educational laws; see R. Demoulin, « Woeste, Charles », *Biographie Nationale*, Brussel: Académie Royale des Sciences, des Lettres et des Beaux Arts de Belgique, 1866-1986, tome 27 (1938), pp. 382-392

and only disagreed on the issue of enforcement.⁵⁶ At the moment of the decision, 1 June 1893, most conservatives and progressives voted in favour of compulsory voting (94 votes), while all the doctrinaire Liberals, nine Catholics and three Progressives voted against (38 votes); two more members abstained. On 12 July 1893, the Senate also approved it, with 58 votes in favour, one against (Montefiori-Levi) and two abstentions.

Obligatory voting was discussed together with other electoral regulations. First of all, the legal obligation as such justified complementary measures to facilitate physical access to the polling places. For example, it was suggested that district voting centres be moved to the smaller communes, that voting hours be extended and that noncontested elections could be waived.⁵⁷ Other suggestions included the enlargement of electoral districts, interest representation and proportionality. Each of these measures was considered relevant for increasing the motivation of voters to participate. Among them, only the initiative to transfer voting operations from district centres to small towns was discussed extensively and included in the Constitution.

Proportional representation was also discussed extensively as a fair and necessary complement to obligatory voting; it would have increased the candidate choices and the voters' chances to be represented. Yet, the Catholics resisted proportionality, which would have given an advantage to the Liberals. In fact, the retention of majority representation with plural voting led as a result to a crushing defeat of the largely urban Liberal Party in the elections of 1894, to the benefit of the Catholics and the Socialists.⁵⁸ Hence, pragmatic considerations, such as electoral advantage, played a major role in the debate on obligatory voting. But, regardless of political intentions, the debate still included many references to ideas, values and concepts, both in favour and against obligatory voting.

⁵⁶ Woeste had supported the enfranchisement of the lower classes on the grounds that workers and farmers would 'naturally' adjust to major social and in particular conservative trends (Mabille 1992, p. 190).

⁵⁷ Beernaert, *Annales Parlementaires Séance du 30 mai 1893*, p. 1542

⁵⁸ Van Eenoo 2003, p. 60

Descriptive representation

According to Beernaert, the general aim of the bill was to prevent abstention, which left the national will ‘unknown’ or even ‘distorted’. Abstention led to the creation of artificial governments, because they were not based on real majorities, but only on a transformation of small partisan minorities into parliamentary majorities.⁵⁹ Abstention gave grounds to the parliamentary opposition to dispute election results, arguing that absent votes would have gone to them.⁶⁰ In other words, it undermined the ‘morality’ and ‘veracity’ of claims about the basis of the existing power and raised doubts about the ‘authority’ of the government.⁶¹ As such, abstention was the source of Caesarism and other disasters.⁶²

Beernaert argued that, because of abstention, « *les résultats de l'élection ne sont plus l'image vraie de l'opinion publique : la majorité est faussée ou, du moins, elle peut l'être.* »⁶³ It is not by accident, nor for tactical purposes, that Beernaert used metaphors such as ‘image’ and ‘falsification’. In order to build a philosophically convincing argument in favour of obligatory voting, he employed a distinct concept of parliamentary representation that was popular among liberals. The same idea formed the core of argumentation in favour of proportional representation, which explains why the two reforms were usually defended together.⁶⁴

The concept of representation that is central in the support of obligatory voting belongs in the rubric of the so-called descriptive or ‘mirror’ representation.⁶⁵ The main idea in the debate was that the expression of the national will should be ‘sincere’ and ‘exact’; in other words, the activity of the national assembly had to reflect faithfully and accurately the political opinions of the nation. In this context, the

⁵⁹ Barthélemy 1912, pp. 475-484

⁶⁰ Dupriez 1901, p. 141

⁶¹ M.De Haerne, *Le vote obligatoire, Discours prononcé à la Conférence française du jeune barreau de Gand*, Gand : Librairie Générale 1892, p. 13

⁶² To support his negative view of abstention, Bergé is quoting the work of French historians Hippolyte Taine on the French Revolution and Alfred Rambaud on civilisation, *Annales Parlementaires Séance du 21 mars 1893*, p. 981

⁶³ Beernaert, *Annales Parlementaires, Séance du 1 mars 1893*, p. 812

⁶⁴ See for example the Belgian parliamentary debates on 16-18 May 1894.

⁶⁵ H.F.Pitkin, *The Concept of Representation*, Berkeley: University of California Press 1967, pp. 60-91;

function of the representative was to be knowledgeable about his/her section of the nation in order to deliberate or govern in its place.⁶⁶ As Beernaert said:

*« pour que la loi soit l'expression de la volonté nationale, pour que ceux qui ont à la faire la représentent exactement, il faut que cette volonté s'exprime, qu'elle se manifeste, qu'elle soit connue, et, évidemment, elle ne l'est pas si les électeurs négligent de se rendre au scrutin. Non seulement alors la volonté nationale n'est pas connue, mais de trop nombreuses abstentions peuvent en fausser l'expression en déplaçant la majorité. »*⁶⁷

Hence, the parliament had to mirror 'exactly' the public opinion, the voice of the people, the will of the nation. It is important to notice here the criteria of resemblance between representatives and represented. Of course, the parallel introduction of plural voting was enough to undermine the principle of accurate numerical representation. But correspondence was neither sociological nor psychological; rather it pertained to 'opinions', political preferences and policy choices. In other words, the Chamber's composition had to reflect accurately the political views of the whole electoral body.

In any case, opponents were not convinced by the argument of descriptive representation for two reasons. The first had to do with the strict dissociation between voting and being represented. According to this view, it was perfectly possible to be represented without voting. For example, groups of people who had no right to vote under the old census system, or were excluded under the present system, were still represented. It was also possible to take part in the vote without being represented. This was the case with electoral minorities who exercised their voting rights were unsuccessful in getting candidates into parliament. As a result such groups of people were thought of as not represented.⁶⁸ In this context, representation was linked less to

⁶⁶ Pitkin 1967, pp. 81-84. Pitkin argues that the concept of descriptive representation places too much importance on the composition rather than the activity of the parliament. Such criticism against the inactivity of 'government of discussion' was at the basis of the movement for direct participation in the late nineteenth century; see P.Magnette, D.Luyten, 'L'idée du parlementarisme en Belgique' in E.Gérard et al (eds.), *Histoire de la Chambre des Représentants de Belgique 1830-2002*, Bruxelles: Cambre des Représentants, 2003, pp. 19-46, p. 29

⁶⁷ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1540

⁶⁸ Orban 1908, p.11 ; Prins, *L'organisation de la liberté et le devoir social*, Bruxelles/Paris: Falk/Alcan 1895, pp. 187-188

the individual and more to classes or interest groups. In many respects, it was the same conceptual division between representation and elections that governed the organisation of syndicates and trade unions.⁶⁹ In short, universal suffrage was a consequence of misidentifying the idea of representation and the principle of election.

The second point of the opposition was based on the subjection of the democratic belief in rule based on quantity to the aristocratic belief in rule based on quality. The principle of obligatory voting attached too much importance to electoral participation by all eligible voters, regardless of their integrity or motivations. But for the opposition, the largest number of voters in general mattered much less than the largest number of 'living forces'. « *Le vote n'a, en effet, de véritable valeur que si celui qui l'émet agit en connaissance de cause. Et pour cela, il faut qu'il prenne intérêt à l'élection* ». ⁷⁰ Those voters who were insufficiently informed and lacked a natural impulse to vote were not worth consulting.

Indeed, votes cast as a result of compulsion were mechanical, hazardous and guided not by the national good, but by small-minded considerations that were foreign to the general interest.⁷¹ More often than not, these votes would turn out to be blank or spoiled ballots. Besides, there was no guarantee that the votes of those who abstained would have an actual impact on the result; even in the unlikely case that all voters who abstained unanimously supported the same political ideas, they had to be organised in order to modify the outcome of an election.⁷² As a result, obligatory voting would not only be useless for representation, it might even be harmful. For the opposition, the aim of representatives was not to mirror the views of the represented, but to make good laws.

Thus, the concept of representation, its character and meaning, was interpreted in different ways by the two sides. The first contended that political representation had to describe as accurately as possible the political opinions of society, and to this end it was important for all voices to be heard; obligatory voting could ensure this. The

⁶⁹ P.Rosanvallon, *Le peuple introuvable*, Paris : Gallimard 1998, pp. 302-316

⁷⁰ Ibid. p. 32

⁷¹ Losseau 1893, p. 17

⁷² Ibid. p. 31

opposition argued that representation was not conditional on the act of voting. Voters did not have to take part in elections in order to be represented. Only the most interested, self-motivated and informed voters were needed to choose the best governors. The wisdom and superior intelligence of lawmakers was more important than information about the opinions and interests of the people.

Neither ‘function’, nor ‘right’: Voting as a ‘mandate’

Obligatory voting was presented as a logical consequence of universal suffrage. The connection was made explicit in the discourse of Alfred Nyssens.

*« Le vote obligatoire, mais n’est-ce pas la raison, n’est-ce pas la logique même, dans un régime de gouvernement populaire, basé sur la volonté des citoyens ? Du moment que les corps politiques sont élus de tous et que la souveraineté doit sortir de la foule de la nation, il importe que tous les citoyens remplissent le devoir social que la loi leur confie, et la participation aux scrutins devient ainsi l’un des premiers devoirs du citoyen. Proclamer l’obligation de prendre part à ce scrutin, c’est a-t-il semblé, demeurer dans la logique des choses et sanctionner un devoir social de premier ordre. Voilà pourquoi le législateur a inscrit dans la Constitution belge le principe du vote obligatoire ».*⁷³

It was argued that the principle of universal participation was better realised when accompanied by a legal obligation. The state had a responsibility not only to respect and protect, but also to fulfil the universal right of political participation, as contemporary human rights defenders would say. Michel de Haerne’s speech in the Barristers’ Conference in Gant — which was also quoted by Beernaert in his parliamentary discourse — explains what the common justifying ground is between obligatory and universal suffrage.⁷⁴ *“Le mode de délégation de la force publique, dans les États démocratiques, repose sur cette persuasion, ou sur cet espoir, que la*

⁷³ A.Nyssens, « Le mouvement politique et sociale en Belgique », *La Reforme Sociale : Bulletin de la Société d’Économie Sociale*, 3ème série, t.X, juillet-décembre 1895, pp. 34-50 (p. 42)

⁷⁴ De Haerne’s is a detailed study that argues against the introduction of obligatory voting.

*meilleure mesure, la meilleure décision, le meilleur homme seront généralement choisis par la masse.»*⁷⁵ Advocates of obligatory voting championed above all the ideal of mass democracy, which a month earlier had led to the adoption of universal suffrage; their advocacy for obligatory voting was inspired by the same ideal now.

However, the combination of universal and obligatory suffrage posed a major conceptual challenge, given that the main doctrines underlying the two principles were traditionally antithetical. Universality was rooted in the idea that suffrage was a natural right, whereas obligation seemed to relate to the concept of voting as a function-duty, or as a kind of technical implementation of the concept of duty. In fact, the Liberals charged that obligation proponents, by adopting universal suffrage in the same Constitution, were implicitly endorsing the first view and were therefore not in a position to appeal to the second. The liberal Graux was quick to remind the assembly of this:

*« Il paraît que, aujourd'hui, les plus conservateurs, après être allés au suffrage universel, après avoir donné le droit de suffrage à tout le monde, au plus misérable, au plus indigent, en sont encore à vouloir en revenir, en dépit du système qu'ils ont voté, à l'idée de la fonction électorale.»*⁷⁶

Indeed, Graux implied that by adopting universal suffrage, the assembly accepted that voting was a personal right and automatically rejected its counter-concept, voting function. Should they try to invoke the latter, they would contradict themselves.⁷⁷

Hence, the supporters of the bill found themselves in a logical bind. They could not use the theory of voting function, because they had written it off by introducing universal suffrage. But they could also not use the theory of natural right, because this would be contradict with the imposition of an obligation on human nature. To reconcile the two theories, Beernaert tried to show they were not antithetical, but

⁷⁵ De Haerne 1892, p. 13

⁷⁶ Graux, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1559

⁷⁷ This traditionalist view was clearly brought up by one of Beernaert's fellow party members, who talked about 'national dignity' and reminded the plenary that the representatives are mandated by 'the whole country'. Rousseuw, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1544

mutually complementary; to find a middle ground, he devised the concept of voting ‘mandate’. In short, he explained that voting was indeed primarily a right, but one he felt could be demarcated and, by twisting the very concept of ‘right’, ultimately transformed it into an obligation.

Beernaert’s rhetorical redescription of voting as an unnatural, impersonal, and non-private right should be understood in this intellectual context. At the beginning of the parliamentary debate, the Catholic leader very firmly declared that voting was not a Rousseauvian fruit of *nature*; it did not derive automatically from the birthright of citizenship, but was granted and regulated by the state.⁷⁸ It was definitely not a gift of God, but had developed as part of a political evolution. In short, it derived from our capacity as citizens and not as humans. This view followed the general trend whereby natural law was losing ground to positivist legal thought.⁷⁹ Hence, suffrage was understood less as a natural right and more as a constitutionally guaranteed provision.

As a second step, Beernaert tried to define what type of right voting was. For him, it was surely not an absolute right, according to both law and custom. To illustrate this, he said selling it was punishable by law and using it exclusively in one’s own private interest was condemnable by standards of social morality.⁸⁰ Echoing the political ideas of John Stuart Mill, Beernaert claimed that, since suffrage was not a commodity, the right to vote was unlike the right to material ownership. Indeed, a special consensus existed that one could not abandon, renounce, delegate, give up, sell or use this right only to satisfy personal interests.

« Personne, en effet, n’a soutenu ici que le suffrage électoral constituerait un droit naturel. On n’a pas prétendu davantage que ce serait un droit privé ou, en quelque sorte, personnel. Tout le monde paraît, au contraire, d’accord pour reconnaître que, ce droit, on ne pourrait ni l’abandonner, ni y renoncer, ni le déléguer, ni le céder. Celui qui prétendrait le vendre tomberait sous l’application de la loi pénale et

⁷⁸ P.Errera, *Traité de droit public belge*, Paris 1909, p. 128

⁷⁹ O.Orban, *Le droit constitutionnel de la Belgique*, Liège 1908, p. 14

⁸⁰ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1539

quiconque en userait au seul point de vue de ses intérêts personnels se rendrait, par cela même, méprisable.»⁸¹

Beernaert made direct reference in his parliamentary speech to Mill, who thirty years earlier had stressed that:

“If it is a right, if it belongs to the voter for his own sake, on what ground can we blame him for selling it, or using it to recommend himself to any one whom it is his interest to please? A person is not expected to consult exclusively the public benefit in the use he makes of his house, or his three per cent stock, or anything else to which he really has a right.”⁸²

Beernaert’s conclusions drew on the distinction between *private* and *public rights*, which was an important development of nineteenth century legal thought.⁸³ For republican thinkers, the logic of this distinction was that, when a private right was violated, only the individual suffered the consequences; in contrast, in cases of public rights the consequences applied to the whole society. Consequently, individuals had full authority over their private, but not public rights.

In this system of classification, franchise made sense only as a public or ‘social’ right: voters did not have an absolute authority over it, because the vote had indirect consequences for the whole of society. The law, Beernaert said, applied to all members of society and every citizen, with or without voting rights, was expected to obey the legal statutes enacted by the national parliament. Since not everyone had the right to vote,⁸⁴ those who could vote had to take into consideration not only their own interest, but the interest of society as a whole, including those without the franchise. In other words, voters were obligated to vote, because they had to express the interests of non-voters in the same way as they expressed their own.

⁸¹ Ibid.

⁸² J.S.Mill, *Considerations on Representative Government*, 1861 (London: Everyman 1999), Ch.10

⁸³ There is a difference between this republican definition of public rights, as an amalgam of private virtue and public interest, and the mainstream liberal understanding of public law today as the limitation of state power over individuals. See M.J.Horwitz, “The History of the Public/Private Distinction”, *University of Pennsylvania Law Review*, Vol. 130 (6), 1982, p. 1424

⁸⁴ Male, over 25 years, registered in a commune and not being deprived of the right to vote.

Therefore, Beernaert concludes that electorship is a ‘mandate’: “*c’est même un mandat à un double point de vue: mandat de la part de la société qui le confère, mandat aussi relativement aux non-électeurs*”.⁸⁵ Or, in the words of Senator Lammens « *L’électeur est chargé d’un véritable mandat, même de la part des non-électeurs, tels que les mineurs, les femmes, les incapables; il est appelé à défendre leurs intérêts par le bulletin de vote* ». ⁸⁶ Conversely, the voter who abstained was “*un déserteur social*”.⁸⁷ Again, this idea was directly linked to Mill, who had also reasoned that the voter had a sort of public mission.

*“[H]is vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a jurymen. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good”.*⁸⁸

This view depicted the voter as the holder of a mandate; he was an agent of society’s will and a delegate of the interests of non-voters, which he had the responsibility to protect. In this sense, the notion of public right became the updated equivalent of the old idea of social function. In both cases, voters were morally accountable to disenfranchised citizens and the public at large. But, ‘public right’ also carried a sense of individual capacity. Thus, suffrage was re-conceptualised as a ‘right’, in particular, a social right, which corresponded to an individual understanding of social responsibility, a mandate-duty, rather than a traditional function-duty, which relied on a vertical ethic of subservience to the nation.

In addition, Beernaert tried to think of precedents that legitimated the notion of mandatory civic activities. In fact, there was an array of pre-existing duties for Belgian citizens, and voting could be placed on an equal footing with them. For example, he mentioned the parental duty, the obligation to sit in criminal juries or to

⁸⁵ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1539

⁸⁶ *Sénat, Annales Parlementaires, Séance du 12 juillet 1893*, pp. 421

⁸⁷ De Haerne 1892, p. 14

⁸⁸ *Ibid.* See also I.Hampsher-Monk, *A History of Modern Political Thought*, Oxford: Blackwell 1992, p.

vote in the elections for the civil guard.⁸⁹ In all those instances, the citizen was involved in a binding engagement towards other citizens or the entire society. In the first instance, minors had a right to be protected, which made the performance of parental duties necessary. With the case of jury duty or electoral service, however, the comparison was even clearer; citizens were mandated to contribute to the judicial or legislative processes for the sake of those who were not eligible for such service.

The criticism of voting as a social right and mandate was fierce. Losseau argued that voters could not act as delegates, for in such case they would be prevented from drawing on their own individuality and personal preferences in voting,⁹⁰ since they would have to subject themselves to the unknown will of the masses and give up their autonomy, which is a crucial capacity for the voter. But voting is certainly not a natural or universal right either, according to the Liberal leader Frère-Orban.⁹¹ The Liberals contended that universal suffrage was utopian, because it did not lead to the production of laws by everyone for everyone. This would have presupposed a unanimity among the voters who elected the representatives, as well as a unanimity among representatives, who made the laws. Consequently, it was wrong to think of universal suffrage as enabling voters to contribute to the creation of the laws.

So, instead of the concept of natural right, the doctrinaire Liberals insisted on the traditional concept of social function based on capacity and exercised in the interest of all.⁹² They backed this with an organic view of the nation-state, influenced by the Swiss-German jurist Bluntschli, as well as an anthropological justification of political inequality as a result of human nature, described by the Belgian liberal Paul Devaux.⁹³ Hence, even though they opposed obligatory voting, they were dedicated supporters of the old notion of voting as a function-duty. This may at first appear as a logical paradox, but it makes sense, if we take into account their belief in a self-motivated elite that does not have to be instructed, but can perceive on its own that voting is a duty. « *Le mérite de l'élection, c'est de procéder de l'électeur, un choix*

⁸⁹ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, pp. 1540-1541

⁹⁰ Losseau 1893, p.23 ; E. De Laveleye, *Essai sur les formes de gouvernement dans les sociétés modernes*, Paris : Baillièrre, p. 116

⁹¹ Frère-Orban, *Annales Parlementaires Séance du 27 et 28 avril 1892*

⁹² Sainctelette, *Annales parlementaires Séance du 6 mai 1892*, p. 1192

⁹³ Cited in Losseau 1893, p. 29

véritable, c'est à dire un acte de jugement et de volonté ». ⁹⁴ Since its inception, the concept of voting function was bound to the capacity to make a choice and to follow this autonomous will.

This point illustrates the difference between the moral and the legal obligation to vote. The perception of moral duty does not apply to everyone; it is linked to a doctrine of intellectual and moral superiority, like the medieval tradition of 'noblesse oblige'. The essence of government is functional as it carries a claim for responsibility; yet, this is not understood by everybody, and therefore participation must remain restricted. Imposing a legal punishment presupposes that some are not able to grasp the moral drive of participation. Hence, not only is it paternalistic to impose an artificial ethic of civic duty on those who, by 'nature', are unequipped to understand this duty, but it also inserts into public affairs those who would normally be excluded. On the whole, the enforcement of universal suffrage was diametrically opposed, in theory and practice, to the Liberals' plan of an elitist democracy.

Voting liberty

Furthermore, the opposition invested much of their effort in attacking the violation of individual freedom and generally the gravity of imposing a new obligation. For example, they protested that a mere administrative task did not necessarily imply a moral duty. To illustrate this, Graux showed the difference between obligations that are accepted voluntarily — like custody of children — and those that are imposed on citizens. ⁹⁵ In the same vein, a distinction was made between *political functions* (*jus honorum*), which have to be exercised in the name of the public good and are *accepted freely*, and *administrative functions* that one is charged with *without voluntarily seeking them out* (*jus suffragii*). ⁹⁶ Ministers and judges had a political function, according to Graux; they had deliberately chosen to undertake these functions. Voting, on the other hand, was an administrative task, imposed by the state.

⁹⁴ F. Guizot, *Histoire des origines du gouvernement représentatif* t.II, Paris : Didier 1880, p. 247

⁹⁵ Graux, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1559

⁹⁶ Orban 1908, p. 14

It should therefore remain voluntary, in order to preserve the citizens' liberty. Graux implied that a legal obligation was excessive, since voters were already required by birthright to accept the right (and duty) to vote.

Even supporters of obligatory voting were ready to admit that there was something paternalistic about this reform. De Haerne protested that compulsion would kill the liberal soul of the Belgian people: "*l'obligatoire est pernicieux; il engourdit, il tue l'initiative, l'indépendance*".⁹⁷ If voting constituted a moral duty, this fact did not automatically imply that it was or could become a legal obligation.⁹⁸ Such an initiative would interfere with the independence of judgment that is required when citizens fulfil their political functions.⁹⁹ Unlike the case of military duty, political activity demanded a civic consciousness and an autonomous opinion about public issues. Therefore, Barthélemy noted that « *le Belge n'aime la contrainte. C'est d'une façon paternelle que l'obligation a été introduite dans la législation. On a voulu combattre l'indifférence et ne punir que l'obstination* ». ¹⁰⁰

This caused the opponents to stress the oppressive character of obligatory voting even more. Woeste was in general wary of the proliferation of citizen obligations. « *L'obligatoire nous presse; il voudrait nous étouffer; et cependant il n'est légitime que quand il est nécessaire; quand il n'est pas nécessaire, c'est le principe de liberté qui doit prévaloir.* »¹⁰¹ Vanderkindere agreed that the array of obligatory functions had to remain as small as possible. Adding more resembled the most egregious aspects of socialism and risked transforming the modern state into one large military camp, like ancient Sparta, where even religion or child birth were obligatory. The paternalistic and centralising character of compulsory voting was for him extreme.

« *Tout ce qui est attentatoire à la liberté de l'individu doit, à mon sens, être écarté, à moins que des raisons extrêmement sérieuses ne plaident pour une solution contraire. [...] ce que nous ne voulons pas, c'est qu'on transforme en caserne l'Etat moderne,*

⁹⁷ De Haerne 1892, p. 33

⁹⁸ The same view was expressed by Montefiori-Levi in the Senate debate, *Sénat, Annales Parlementaires, Séance du 12 juillet 1893*, pp. 423-424

⁹⁹ On the link between individual autonomy and suffrage, see Rosanvallon 1992, pp. 135-144

¹⁰⁰ Barthélemy 1923, p. 155

¹⁰¹ Woeste, *Annales Parlementaires, Séance du 10 mars 1893*, p. 898

*c'est qu'on donne un développement nouveau à cette tendance, que malheureusement je vois apparaître jusque sur les bancs du gouvernement, de tout rendre obligatoire et de détruire la liberté du citoyen».*¹⁰²

He insisted that obligatory voting would harm the liberty of the individual. Yet, his point of view was largely based on a negative notion of individual liberty as non-interference, which is secured only as long as the state does not restrict it. This having been the classical conception of liberty since Hobbes,¹⁰³ it was not so surprising that the Belgian Liberals accused the obligation to vote of restricting liberty. They claimed that unless voters decided to go to the polls on their own, according to their individual wills, the electoral process would not be legitimate. In a nutshell, liberty was to mean unimpeded, voluntary and self-motivated action, an indispensable requirement for democratic legitimacy.

Beernaert disagreed, arguing that liberty was not incompatible with a sense of duty and by no means implied having to dispense with duty.¹⁰⁴ Just as right and duty went together, so the moral determinants of liberty allowed for the existence of duty. In particular, the liberty of voters to determine their participation in voting was conditioned by the need for a complete expression of the national will and by voters' obligation towards disenfranchised members of society. *“Son droit, en matière d'élection, de faire ce qu'il veut et de s'abstenir a pour limites les droits et la liberté d'autrui et la sécurité publique”.*¹⁰⁵ Conversely, abstention was considered an evil, because it violated this obligation. This resonated in a quote from Frère-Orban, reproduced by Beernaert: *« De toutes les manières de faire le mal, la plus fâcheuse, la plus inexcusable est celle qui consiste à laisser faire les autres, en s'abstenant ».*¹⁰⁶ Hence, abstention was harmful to other citizens and, as a result, voters did not have the 'liberty' to resort to it.

¹⁰² Vanderkindere, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1568

¹⁰³ I. Berlin, "Two Concepts of Liberty" (1958), in H. Hardy, *Isaiah Berlin : Liberty*, Oxford : Oxford University Press 2007, p. 170

¹⁰⁴ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1541

¹⁰⁵ Crombez 1865, p. 99

¹⁰⁶ Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1540

With these statements, Beernaert was, by and large, drawing on the concept of republican liberty, revived in the civic humanist tradition.¹⁰⁷ To some extent, John Stuart Mill also agreed to such an understanding of liberty. He said that the possibility of *harming others* justified placing restrictions on individual liberty, particularly concerning actions that violated an obligation to others or posed a detriment to society.¹⁰⁸ Even for Rousseau, the definition of liberty included both individual rights and republican citizenship.¹⁰⁹ Rousseauvian liberty was conditioned by having a share of the sovereign authority that prescribed the laws and by actively participating in public affairs.

But liberty was not only understood in connection to the public good; it was also a precondition for the proper exercise of voting. In particular, a voter's liberty could be violated by fellow citizens, in which cases the state had a responsibility to protect the voter. For example, there was a need to prevent partisan groups from obstructing their adversaries' physical access to the polls.¹¹⁰ But much more urgent was to provide protection to voters from undue influence by, e.g. employers, who may try to prohibit their employees from voting. Thus, liberty was also secured by preventing abstention-buying and minimising employees' vulnerability as voters due to their financial dependence. The intent was to prevent electoral fraud and, by this, free the voter from such coercion.¹¹¹ This is why the progressive Bergé argues that obligatory voting "*assurera à l'électeur une plus grande liberté*".¹¹² Hence, unlike the doctrinaire liberals, Beernaert and others described voting liberty not as the absence of obligation to the state, but as the absence of pressure by other citizens and the guarantee of voters' independence.

However, the opposition insisted that individuals should have the 'liberty' or right to abstain. «*Les raisons de ne pas voter sont nombreuses et elles appartiennent au*

¹⁰⁷ Q.Skinner, *Liberty before Liberalism*, Cambridge: Cambridge University Press 1998

¹⁰⁸ J.S.Mill, *On Liberty* (1869), London: Everyman 1999, Ch.4

¹⁰⁹ J.J.Rousseau, *The Social Contract and Discourses* (1764), transl. G.D.H. Cole, ed. A.Ryan, London: Everyman 1993, p. 193

¹¹⁰ De Sadeleer, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1557

¹¹¹ J.Barthélemy, "Pour le vote obligatoire", *Revue du Droit Public et de Science Politique* 1923, p. 121 ; See also Hauchecorne 2004, p. 17

¹¹² Bergé, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1552

*domaine de la liberté, qu'il faut respecter.»*¹¹³ According to Vanderkindere, for those who were not interested in the elections, or believed that their own views had no chance to prevail, abstention took the character of a legitimate protest.¹¹⁴ This point carried special weight as a human-rights argument, if one takes into account the technical conditions of electoral organisation. In fact, the range in the choice of candidates, the chance of getting represented and the impact of a single vote on the overall result varied according to the voting system and how the electoral district was designed. For example, coercive aspects of enforced suffrage could be exacerbated in a two-party majority system, like the one Belgium had until 1892. Indeed, until the establishment of proportional representation in 1899, the Liberal Party was very disadvantaged compared to the Catholics and the Socialists.

What is more, the right of abstention was a type of civil disobedience against various electoral malpractices. These were common before 1893, but continued also later, with the manipulation of the plural vote.¹¹⁵ Despite all efforts to protect the independence of individual voters and deter electoral fraud, the new voting rules were not a guarantee against partisan tactics, micro-interests and human vices.

Civic competence

In the meantime, another issue implicitly connected to mandatory vote was civic competence. In the long history of the suffrage movement, fear that the poor and less educated, the so-called 'ignorant', were unable to 'think politically' or knew little about how to vote (for example, lacking the literacy needed to read the ballot) had for decades been used in restricting suffrage on the basis of intellectual capacity and education. The bourgeois classes, on the contrary, were not prone to abstain since they were enlightened, more conscious of their roles in society, anchored in their

¹¹³ Graux, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1559

¹¹⁴ Vanderkindere, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1569

¹¹⁵ J.Gilissen, *Le régime représentative en Belgique depuis 1790*, Brussels: Renaissance du Livre 1958, pp. 121-160

political convictions and cognizant of the importance of their voting privilege.¹¹⁶ On this basis, opponents of obligatory voting disagreed about the democratic consequences of the universalization that underlined the new system.

In the footsteps of their leader Frère-Orban, a committed supporter of census suffrage, Liberals indeed argued that abstainers were from the vulgar classes and referred to them with denigrating terms. Vanderkindere called them void of opinions and accused them of casting useless votes,¹¹⁷ while Graux argued that, due to poverty and ignorance, they were doomed to always live on the outskirts of human society. As a result, they had no idea of public affairs and it was illogical to try to force them to develop such a consciousness: « *après que vous les avez contraints à être électeurs, allez-vous contraindre à aller aux urnes ceux qui, ayant conscience de leur incapacité, ne savent pas ce qu'ils iront y faire?* ». ¹¹⁸ The belief that illiterate and disinterested citizens should be excluded from the electorate was conspicuous in the Liberals' effort to fight against the principle of obligatory voting.

This argument was turned around by obligatory and universal suffrage advocates: exactly because the suffrage was being extended in the same reform, new voters had to urgently achieve a higher intellectual and moral standing. Since the 1860s the progressives had connected their demands for universal suffrage to the introduction of compulsory education.¹¹⁹ The general aim was to help the lower classes attain a higher cultural level, in order to integrate them harmoniously in the political process.¹²⁰ A similar goal was underway in France, where Proudhon's motto '*démocratie, c'est démopédie*' and Jules Ferry laws on public education had also established a connection between education and suffrage.¹²¹ The ultimate goal was to raise the political competence of citizens, and what better way to do it than through obligatory participation in electoral procedures.

¹¹⁶ N.Quiri, *Le vote obligatoire*, Paris, 1908, p. 120

¹¹⁷ Vanderkindere, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1540

¹¹⁸ Graux, *Annales Parlementaires, Séance du 31 mai 1893*, p. 1559

¹¹⁹ P.Lafitte, *Le suffrage universel et le régime parlementaire*, Paris: Hachette 1888, p. 154; See also Pouillet, *Annales Parlementaires, Séance du 30 juillet 1895*, p. 2332. The most enthusiastic advocate of this joint cause, Paul Hymans, paved the way for the introduction of mandatory education (1914) and equal suffrage (1919).

¹²⁰ Witte 2001, pp. 59-60

¹²¹ P.Rosanvallon, *Le sacre du citoyen*, Paris: Gallimard 1992, pp. 468-90

Although Beernaert did not say much about civic education as such, he nevertheless left a hint that the practice of obligatory poll attendance would teach voters how to vote. « *Du moment où on doit aller voter, on ne se rendra que bien rarement au scrutin pour n'en rien faire.* »¹²² Once voters were obliged to go to the polls, they would make an effort to choose a candidate, rather than casting a blank ballot. Thus, it should not have been feared that, with secret voting in place, abstention would still continue in the form of casting blank ballots. Michel de Haerne had a similar opinion. « *Saisi dans l'engrenage de la vie politique, l'électeur prendrait bientôt goût à cette fonction pour laquelle son respect s'accroîtrait à la vue de l'intérêt qu'y portent ses concitoyens.* »¹²³ This line of thought owed its origin to the educative role of politics as activity, which was often stressed in John Stuart Mill's work. For Mill, private citizens could be morally uplifted through participation in public affairs.

*"[The citizen] is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good".*¹²⁴

In this sense, active political citizenship had civilising effects, while voting became the educative act *par excellence*. The punishment of abstention was an innovative way to turn politics into an educative enterprise. Obligatory voting would offer training in civics to new voters who did not know how to vote. It would also impress upon both old and new voters that the meaning of voting was to serve the common good. As Barthélemy admitted two decades later, Belgians became convinced over time that the obligation to vote was an efficient means of political education.¹²⁵ The principal means of achieving this was through the power of custom and, of course, an effective system of punishment.

¹²² Beernaert, *Annales Parlementaires, Séance du 30 mai 1893*, p. 1541

¹²³ De Haerne 1892, p. 19

¹²⁴ Mill 1861, Ch.3

¹²⁵ Barthélemy 1912, p. 483

May-June 1894: Debating the sanctions

During the adoption of obligatory voting as a constitutional provision in the summer of 1893, it was decided that the practical aspects of its enforcement would be put aside until later and codified at that time under '*jus commune*'. Indeed, the electoral law of 28 June 1894 did include Articles 220-223,¹²⁶ which regulated the system of voting enforcement. Voters who abstained could notify the local court of any reasons that might excuse their absence from the polls and thereby be dismissed of all charges. If not, they were subject to reprimand or a fine of 1-3 francs¹²⁷ for a first abstention. If they abstained again within 6 years, they had to pay a fine of 3-25 francs, which could not be converted to imprisonment. For a third abstention within 10 years, in addition to previous sanctions, their names were published in front of the municipal building for one month (*affichage*). Finally, a fourth abstention within 15 years led in addition to removal from voting lists for ten years and a status of ineligibility for any nomination, promotion or distinction in civil service.

The range of sanctions was the result of a parliamentary debate on 31 May and 6 June 1894, where efforts were made to incorporate both moral and practical sides of the punishment. The penalties that were on the table can be divided into three categories. The first was not discussed at all during the debate, for it had been voted down in 1865. This was the positive sanction whereby voters were to be compensated for attending the polls or for the expenses they incurred in attending the polling stations (e.g. De Decker 1858). This option was favoured by those opponents of obligatory voting who were influenced by the ancient Greek paradigm as an alternative to imposing a negative punishment.¹²⁸ However, it was opposed on the grounds that rewarding voters had the appearance of putting a price on the performance of what were, after all, considered to be civic duties, and it was feared that this might lead to

¹²⁶ *Doc.parl. n.206, Séance du 1er juin 1894*, pp. 23-24. See also A.Delcroix, *Élections Législatives: Commentaire des lois des 28 juin 1894-11 juin 1896 et 29 décembre 1899*, Bruxelles : Guyot 1900, p. 53 ; P.Biddaer - É.Somerhausen, *Élections Législatives : Commentaire des lois électorales coordonnées*, Bruxelles : Janssens 1900, pp. 93-95

¹²⁷ In 1890-1900, 1 Belgian franc ≈ 3.2 EUR, approx. 5 francs being the daily wage of an industrial male worker.

¹²⁸ L.Losseau, *Le vote obligatoire*, Bruxelles : Alliance Typographique, pp. 7-8

servile or cynical attitudes among them.¹²⁹ Therefore, the discussions focused on the other two categories, which included the payment of fines and the moral sanction of a temporary suspension of the right to vote.

The imposition of fines was chosen by the preparatory commission of the election law as the most efficient way to punish abstainers for having skewed the electoral results.

« *Celui qui s'abstient de voter fausse, par son abstention, les résultats généraux de la consultation populaire. Il commet une faute qui mérite d'être punie, et les sanctions morales semblent devoir être une punition insuffisante, surtout pour des fautes répétées.* » (emphasis added)

A small fine was introduced that would gradually increase for repeated abstentions. It was decided to rule out the possibility of “*emprisonnement subsidiaire*”, i.e. imprisoning offenders, which would have been standard procedure under the Penal Code for those who were unable to pay their fines.¹³⁰ This would have been an extravagant, counter-productive and extremely unpopular sanction: “*ce serait un spectacle vraiment trop étrange que celui du souverain populaire mis en prison pour ne pas avoir exercé sa royauté*”.¹³¹ For the same reason, the seizure of salaries or property from poor voters as a punishment for abstention was also prohibited. Hence, Woeste argued, it was impossible to design an efficient mechanism for punishing abstention. The perfect sanctions, which were neither too strict nor too soft, ‘moderate yet serious’, were in fact intangible.

Besides Woeste’s critique financial sanctions had indeed some disadvantages in comparison to moral penalties. They affected rich and poor voters unequally. According to the Minister of Interior « *Si tous les citoyens sont égaux devant la loi, ils ne le sont pas tout devant la déesse Fortune !* ». ¹³² Instead of choosing progressive fines, which would have been proportional to voters’ economic situations, poor voters

¹²⁹ De Haerne 1892, p. 21

¹³⁰ Delbeke, Woeste, Burlet, *Annales Parlementaires, Séance du 31 mai 1894*, pp. 1681-1682 ; *Rapport Delbeke, Documents Parlementaires n.150, Chambre des Représentants, Séance du 24 avril 1894*, pp. 9-10

¹³¹ De Haerne 1892, p. 23

¹³² Burlet, *Sénat, Annales Parlementaires, Séance du 20 juin 1894*, p. 561

were protected by ruling out imprisonment for non-payment. But this made the fines ineffective against poor voters, which was another serious shortcoming. In addition, as with the payment of indemnities, imposing fines was tantamount to assigning a price to a civic duty, which demeaned the symbolic, political and moral value of suffrage.¹³³

To offset the disadvantages of fines, ethical penalties were introduced. They included public posting of abstainers' names,¹³⁴ the temporary suspension of the voting right and ineligibility to receive nomination or promotion for civil service. These penalties were a form of punishment that was consistent with the spirit of the constitutional provision. They were « *très efficace et bien en harmonie avec l'idée fondamentale de la disposition* ». ¹³⁵ Moral sanctions also had some advantages compared to financial sanctions: they affected everybody equally, treated abstention as a form of wrongdoing and contributed to raising the value of the right to vote in the eyes of voters.

The specifics of each of these sanctions had certain practical and semantic effects. For example, the public listing of names allowed party bosses to identify those who abstained and try to recruit them to attend the polls in future elections.¹³⁶ On the other hand, the restrictions imposed on civil servants implied that, in order to merit a state job or promotion, one had to show loyalty and respect to the state. Conversely, compared to other citizens, civil servants were expected to exemplify greater responsibility towards state institutions.

In general, moral sanctions, particularly the suspension of voting rights, corresponded to the incapacities and moral deficiencies that were thought to characterise those who abstained. The public listing of names in a so-called *tableau de défaveur* was justified by Rosseeuw as being something like a certificate of incivility. For Nyssens, abstention was an act of deliberate renunciation of one's essential qualities as a citizen.

¹³³ Ibid. p. 22

¹³⁴ Punishment by *affichage* was abolished later, after 1937, see Hauchecorne p. 25 n.44.

¹³⁵ Nyssens, *Annales Parlementaires, Séance du 6 juin 1894*, p. 1794

¹³⁶ Adolph 1901, pp. 105-106

« Il s'agit d'un citoyen qui refuse de remplir les devoirs civiques que la Constitution lui impose, et la loi trouve tout naturel de le déclarer frappé d'une *capitis diminutio*, puisqu'il a renoncé lui-même aux droits essentiels de sa qualité de citoyen et qu'il y a renoncé obstinément, en marquant sa volonté formelle de ne pas être citoyen.»¹³⁷

Hence, this penalty rested on the idea that voters had to have certain moral qualities.¹³⁸ They had been selected among other citizens as a sign of trust that they would demonstrate high civic competencies. Losing the right to vote was a consequence of having demonstrated political incapacity, as revealed through the act of abstention. Hence, the public posting of offenders' names was a natural punishment for abandonment of civic responsibilities and moral dissolution.

Another controversy was provoked by the choice of the jurisdiction that would sentence offenders. The Catholic Minister of Interior and Public Instruction Burlet insisted on the lower courts (*juge de paix*), because abstention was a minor and not a criminal or correctional offence. It was regulated by basic law, as was the incapacity to vote. Besides, the competence of these courts with regard to the punishment of abstention was explicitly mentioned in the constitutional provision.

However, opponents of the bill suggested that abstention should fall under the jurisdiction of criminal courts (*cour d'assises*) and be treated as a serious political offence.¹³⁹ Voting was a political obligation and, as a consequence, non-voting corresponded to a kind of political crime, similar to e.g. the electoral corruption of offering meals to voters before elections. A general confusion was caused by the lack of a constitutional code for serious political offences. Nyssens admitted that abstention was a political offence, but only a minor one, since the relevant sanctions were only small fines. But Woeste underlined that, after repeated abstention, voting rights would be suspended, which was not at all a minor penalty. Hanssens agreed that it would be excessive to allow lower-court judges to remove the strip citizens of

¹³⁷ Nyssens, *Annales Parlementaires, Séance du 6 juin 1894*, p. 1794

¹³⁸ M.Hauchecorne, *Le suffrage en questions: Une étude des débats autour du vote obligatoire (Australie, Belgique, États-Unis, France)*, Mémoire DEA, IEP Paris 2004, pp. 25-26

¹³⁹ Woeste et al, *Annales Parlementaires, Séance du 6 juin 1894*, pp. 1795-1803

their basic political rights. Yet, after a fierce debate, the local courts retained the jurisdiction on the declaration that the sentence of an ‘incapacity to vote’ would not be pronounced by them independently, but would be a direct consequence of the charges filed by the prosecutors.

Liberals were also concerned about how susceptible the system of punishment was to political manipulation. Woeste had already warned against extraordinary jurisdictions that would involve communal councils or party agents to consider abstention excuses. There was a risk that they would neither punish their political adversaries, because their abstentions benefitted them, nor their supporters, for fear of alienating them.¹⁴⁰ There was also a danger that excuses would be judged according to the perpetrator’s political convictions and more voting rights easily removed in the case of political opponents. Therefore, judicial neutrality in the handling of abstention cases had to be doubly safeguarded.

Another problem were seasonal workers, travelling salesmen and others who were out of country during the summer and had no financial means to return for the elections (which applied to about 60,000 persons).¹⁴¹ It was suggested that elections avoid being called during summer months, choosing October instead, when such workers returned. The Catholics were not pleased with this proposal, but as a goodwill gesture they did approve an extended period of six months during which time objections against penalties could be filed. A new provision introduced later (11 June 1896 Law, Art. 172) ordered free travel on state-owned railways for voters who on the day of elections were not physically present in the community where they were registered to vote.¹⁴² Still, the so-called *service électoral* did not solve the problem of those who worked abroad, about whom, due to political calculations, the Catholics seemed to care less than the Progressives. Thus, the consideration of easy exemptions for seasonal workers instead of measures that would have ensured their voting was linked to the low interest of Catholics in rallying them.

¹⁴⁰ Woeste, *Annales Parlementaires, Séance du 10 mars 1893*, p. 898

¹⁴¹ This case was also discussed in the Senate; see C.Scheyven and P.Holvoet, *Code Électoral Belge expliqué d’après les travaux parlementaires*, Bruxelles: Bruylant 1894, pp. 320-323

¹⁴² O.Pyfferoen, *L’électorat politique et administratif en Europe*, Paris: Giard et Brière 1903, p. 237

The new law applied only to legislative elections; therefore the time frames for repeated abstention were so long (15 years for four abstentions). Abstention in the second-round of an election, the so-called *ballotage*, did not count as a new abstention. In addition, it was decided not to proceed to an election by ballot if there was no competition between candidates. Hence, like in England, a distinction was drawn between ‘nomination’, i.e. a presentation of candidates, and ‘poll’, i.e. the electoral procedure that allocates seats to those candidates who are selected.¹⁴³ Obligation applied, of course, only to the polling procedure.

Obligatory voting was proposed during the discussion of the laws of 29 June 1894 and 12 September 1895 for provincial elections and communal elections, respectively.¹⁴⁴ They specified that repeated abstention would only count with regard to the same type of elections. The Liberals had objected to the wider application, arguing that communal elections were more an administrative than political process. Hence, participation in such elections was useless in terms of instructing citizens in thinking about public affairs. Besides, many thought that the law had only been introduced in order to serve political interests just ahead of the upcoming elections (14 October 1894).¹⁴⁵ Yet, the persistence of the law after 1894 shows that its justification was not as contingent as thought.

The effects of the reform after 1895

In the following years, several new political reforms took place and others were consolidated. In 1899, the Belgians introduced proportional representation – a long-term goal of the Workers’ Party and the Liberal Party. Preliminary discussions about this reform had been made in combination with obligatory voting already since 1893. It was argued that a great number of abstentions were linked to the majority system, which resulted in many voters casting either blank or ill-considered votes that had no

¹⁴³ Ibid., p. 236

¹⁴⁴ Adolph 1901, p. 103

¹⁴⁵ Ibid. p. 109

impact on the result.¹⁴⁶ Obligatory voting aggravated all the vices of the majority system.

*« On voit dans les scrutins un tiers au moins du corps électoral obligé de venir déposer un billet blanc dans l'urne, ou de voter pour des candidats dont le programme est l'antithèse de ses désirs et de ses convictions. Car l'obligation du vote ne permet même pas de s'abstenir, et nous assistons à ce déconcertant spectacle, plus que jamais mis en lumière, de l'impossibilité matérielle de voter selon sa conscience ».*¹⁴⁷

In order to save the fairness and popularity of obligatory voting, it was necessary to ensure the potency of the votes cast. *« Si vous contraignez l'électeur à se présenter devant l'urne, vous lui devez cette garantie que son intervention sera efficace et opérante dans toute la mesure du possible ».*¹⁴⁸ Obligatory voting without proportional representation was defective. *« Qu'est-ce que le vote obligatoire, quand il n'est pas en même temps le vote utile ? Une vaine corvée et un non-sens ».*¹⁴⁹ The count Goblet d'Alviella agreed: *« Le vote obligatoire sous le système majoritaire n'était qu'une absurdité et une injustice de plus ».*¹⁵⁰ In other words, proportionality and obligation were closely related principles: the existence of one without the other was enough to justify a new reform.

According to Paul Hymans, architect of universal suffrage in Belgium and future Liberal Minister (1918-1936), proportional representation and obligatory voting were the only methods that could safeguard the regime from abstention:

« Deux correctifs nous mettent à l'abri du danger des entraînements. C'est d'abord le vote obligatoire qui assure la participation aux affaires de la nation des éléments les plus modérés, ceux que trop souvent, en France, par exemple, la lassitude, ou

¹⁴⁶ P. Cameau, *La représentation proportionnelle en Belgique*, Thèse pour le doctorat, Université Caen, Faculté de Droit, Paris : Arthur Rousseau, 1901, pp. 82-84

¹⁴⁷ J. Carlier, « Progrès ou recul ? », *Revue mensuelle de l'Association réformatrice belge* 1895, p. 62

¹⁴⁸ Van den Heuvel, *Annales Parlementaires, Séance du 27 septembre 1899*, p. 273

¹⁴⁹ J. Mommaert, *Le régime électoral en Belgique et à l'étranger*, Bruxelles : Scheppens 1899, p. 3

¹⁵⁰ E. Goblet d'Alviella, *La représentation proportionnelle en Belgique : histoire d'une réforme*, Bruxelles : Weissenbruch 1900, p. 69

*l'indifférence, ou l'égoïsme éloigne du champ des luttes électorales ; c'est surtout la représentation proportionnelle qui consacre et sauvegarde le droit à la vie de tous les partis, empêche leur écrasement et peut constituer un frein si puissant que le gouvernement de parti lui-même deviendrait impossible».*¹⁵¹

Indeed, most of the evaluations of obligatory voting were positive, which encouraged other countries to also become interested in obligatory voting. Barthélemy, the strongest supporter of the system in France, reported that abstention rates had significantly declined in Belgium after the reform. From around 24% before 1893,¹⁵² they dropped to an average of 6% in the three elections following the reform¹⁵³ and 4-5% from 1902 till 1912.¹⁵⁴ This meant that willing abstention had been almost entirely eliminated and the remainder was due to legitimate causes, such as old age, illness, death, seasonal work abroad and so on.

In addition, the number of convictions was relatively low. For example, only approximately 3 out of 1000 abstainers (2,76‰) were subject to reprimands or fines in 1898, and 3 out of 100 in 1910.¹⁵⁵ The percentage of both abstentions and convictions remained consistently low throughout the next two decades.¹⁵⁶ In conclusion, even though other factors contributed to low abstention in Belgium, most was due to the imposition of sanctions; hence, the goal of decreasing electoral abstention rates had been a crowning success.

The system also seemed to work generally without problems. Fears were expressed that the earlier practice of paying citizens to abstain who were otherwise undecided or opposition voters was sometimes replaced by paying for these voters to cast blank

¹⁵¹ P.Hymans, « Le parti libéral et le suffrage universel », *Revue de Belgique*, 15 August 1911, pp. 807-812

¹⁵² 26% in 1870, 30% in 1884 and 16% in 1892, see Dupriez 1901, pp. 130-138, Barthélemy 1912, pp.477-482

¹⁵³ 5.4% in 1894, 7.5% in 1896, 5.3 in 1898 and 5.9% in 1900. Ibid.

¹⁵⁴ However, available statistics referred to the number of votes and not voters, which were different due to the plural voting system, Barthélemy 1923, p. 151

¹⁵⁵ Ibid.

¹⁵⁶ In the 1904 legislative elections, 504 voters were acquitted, 849 reprimanded and 1,150 fined. Similarly in 1912, out of 5,708 abstaining voters, 1,802 were acquitted, 2,044 reprimanded and 2,002 fined. For a more detailed table and statistical analysis, see Barthélemy 1923, pp. 151-155

ballots (*on a acheté la nullité de vote*).¹⁵⁷ However, the amount of blank ballots was not excessive; it was argued that, once obliged to come to the polls, voters tended to cast a valid vote.¹⁵⁸ This observation supported the argument that the new system was educating Belgian citizens about voting procedures and participating in public affairs, which led Nyssens to conclude that “*le principe de l’obligation du vote est entré dans nos moeurs*”.¹⁵⁹

Léon Dupriez, a professor at the University of Leuven at the time, tried to explain the success of obligatory voting in Belgium in comparison to other countries. He admitted that strong and competitive parties had contributed to high participation rates, but this alone was not sufficient. England had a similar system, yet much higher abstention rates. On the other hand, obligatory voting was also not a panacea. Its introduction in Switzerland had not been as successful, since some cantons were dominated by a single party, voter fatigue had set in due to the number of contests and the organisation of the system of sanctions was defective. As a result, he suggested four preconditions for the success of obligatory voting.¹⁶⁰

- (i) a competitive political system, including strong parties and motivated voters
- (ii) a range of moderate sanctions and their effective administration
- (iii) respect for freedom of assembly for the parties and freedom of voting for the electorate
- (iv) proportional representation, to maximise the chance of being represented by a candidate of one’s choosing

In other words, obligatory voting had to be viewed against a number of contextual factors, which explain why it succeeded in meeting the goals set by its advocates in Belgium. As a result, obligatory voting was applied to provincial and to communal elections in 1921 and 1932, respectively.

¹⁵⁷ Barthélemy 1912, p. 480, n.1

¹⁵⁸ Ibid. p. 482

¹⁵⁹ Nyssens 1895, p. 43

¹⁶⁰ Dupriez 1901, pp. 150-154

Unlike obligatory suffrage, plural voting became very unpopular, not least because of the consistent struggles of the Workers' Party for equal suffrage. In addition to maintaining strict class divisions, plural voting encouraged a host of electoral malpractices. For example, individual voters began to expect monetary payments from their parties in order to purchase voting qualifications to which they otherwise would not be entitled. In addition, parties manipulated the tax system to add or exclude voters according to the voters' political affiliations.¹⁶¹ Therefore, in 1919 after the First World War, plural voting was abolished and replaced by universal suffrage '*pur et simple*'. Furthermore, the voting age was lowered to 21 and women's suffrage was introduced for communal elections. As a result, the obligation to vote ceased to contribute to electoral inequalities and came to support universal and equal suffrage.

After the Second World War, the democratisation of suffrage made further advances. In 1948, Belgian women acquired the right to vote in legislative elections (Law of 27 March 1948) and in provincial elections (Law of 26 July 1948) and practiced it for the first time on 26 June 1949. Women's right to vote in communal elections had been in place since 1920. The delay of their parliamentary franchise was mainly due to having been regarded as religious voters that would benefit the Catholic Party.¹⁶² For this reason, the Socialists, who otherwise had been at the forefront of suffrage struggles in Belgium, delayed the integration of female suffrage into their priorities. When the right to vote was granted to women, obligatory voting also applied to them.

Concluding note

The argumentation in the 1893 debate helps explain why compulsory voting can work both as a coercive measure and as a democratic guarantee. In fact, much ambiguity and a mixed republican-liberal tone existed in the 1893 reform. On the one side, compulsory voting seems to violate the mainstream ideal of individual liberty,

¹⁶¹ J. Gilissen, *Le régime représentative en Belgique depuis 1790*, Brussels: La Renaissance du Livre 1958

¹⁶² Mabile 1992, p. 196 n.17

understood as lack of coercion. In addition, it obstructs the 'natural' selection of capable voters and the exclusion of apathetic voters. On these grounds, the liberals in Belgium were opposed to the idea, which they saw as an oppressive measure. On the other, it refers to the republican-democratic principle of universal suffrage and good citizenship. Thus, it promotes the democratic expression of all citizens and can be considered a guarantee to democracy.

In fact, the originality of the Belgian parliamentary reform of 1893 is in the simultaneous introduction of three new voting principles: plural, universal and obligatory voting. The former was very elitist and exclusive, while universal voting was a radically egalitarian innovation. Obligatory voting was a way to extend both principles in their respective directions. In this sense, it was both a democratic and a coercive legal norm.

Chapter 6: Compulsory voting in unstable democracies - the Greek case (1900-70)

The successful introduction of obligatory voting in Belgium and spill-over discussions in Germany and elsewhere also attracted the attention of Greek politicians around the turn of the century. Apart from sharing some common problems regarding justifying the adoption of obligatory voting in these countries, there are factors particular to its introduction in Greece. For example, one special Greek concern is the control of ethnic and religious minorities, both in the South (Crete) and the North (Macedonia) of the country. Much more important, however, is the radical electoral antagonism between pro-monarchists and republicans. In fact, the two sides use abstention as a political weapon, boycotting every other electoral contest and then disputing its result. Hence, the political framework of obligatory voting is significantly different in Greece than elsewhere.

An additional reason for development of an affinity for obligatory voting in modern Greece is found in Greek political culture. On one hand, the practice of local self-government in the Ottoman communities provided an institutional memory of political inclusion and equal participation, which also explains the early introduction of universal suffrage.¹ On the other hand, the admiration for ancient Greece and its projection onto the modern state for foreign consumption contributed to a self-fulfilling identification with the classic democratic tradition. This became explicit when quotes from Ancient Greece were directly used in parliamentary debates of the 1920s. Yet, before the twentieth century, there was hardly any mention of compulsory voting in Greece, despite the revival of this ancient tradition in Switzerland, France, Belgium and beyond.²

¹ Sotirellis 1991, pp. 86-91

² The only exception is the 1833 Law on Municipalities; see Ch.2, p. 8.

The modern history of Greece is marked by an alternation of republican and monarchic rule. The First Hellenic Republic (1821-1828) during the War of Independence was succeeded by a monarchic rule that lasted one century until the establishment of a short-lived Second Republic (1924-35). The monarchy was restored in 1935 and remained until its final demise in 1974, when the end of a seven-year dictatorship gave way to the current Third Republic. These long years of monarchy gave a rather strong political role to the crown throughout the nineteenth and twentieth century.

Greece developed democratic institutions relatively early, although it took a long time before they functioned properly. Universal and secret suffrage for men over 21 years was introduced in the 1864 Constitution (Art. 66), with the use of ‘spherules’, i.e. small black and white balls used in voting instead of ballot papers. Yet, there was no mass mobilisation, the elections were rigged, the parties rather weak and the governments of very short duration.³ The client parties of the Great Powers (Russia, Britain and France)⁴ gradually gave way to a two-party system in 1877.

For the next three decades, political life was dominated by rivalries between the New or Modernist Party, founded by Trikoupis, and the Nationalist Party, led by Deligiannis. From 1910 until the 1940s, this political division was continued by the republican-leaning Liberal Party of Eleftherios Venizelos (Venizelists) and the conservative and royalist People’s Party of Panagis Tsaldaris (Anti-Venizelists). The radical break between liberal and pro-monarchist political camps, culminating in the 1915-17 National Schism (*Ethnikos Dichasmos*) and continuing during the whole inter-war period, lies at the heart of the fierce electoral battles and the tendency of governments to manipulate elections to benefit their party.

Venizelos’ 1899 proposal in Crete: Controlling ethnic minorities

³ N.Diamandouros (1998), «Η εγκαθίδρυση του κοινοβουλευτισμού στην Ελλάδα και η λειτουργία του κατά τον 19^ο αιώνα» [The establishment of parliamentarism in Greece and its operation in the 19th century’], D.G.Tsaousis, *Όψεις της ελληνικής κοινωνίας του 19^{ου} αιώνα [Aspects of 19th century Greek society]*, Athens: Estia, pp. 55-71

⁴ G.Hering (1992), *Die politischen Parteien in Griechenland 1821-1936*, Teil 1, München: Oldenbourg, pp. 174-223

Eleftherios Venizelos, a Cretan revolutionary and subsequent celebrated national leader, was the first person to consider making voting obligatory in the Autonomous Cretan State. Throughout the second half of the nineteenth century, there was continuous tension in then Ottoman-held Crete between the ruling Turkish Muslims and Christian Greeks, who had initiated numerous local revolutions aimed at forming a union with the Kingdom of Greece. After the 1897 uprising, the Great Powers assumed administration of the island. Prince George of Greece became High Commissioner and appointed an Executive Committee with Venizelos as Minister of Justice.

In this context, the discussions on the constitutional design of the autonomous state from February to April 1899 were held by a 16-member committee comprising 12 Christians and 4 Muslims. The electoral rules under review included: the representation of minorities, the single ballot, plural and obligatory voting.⁵ Of these, only the first two were adopted, along with universal, direct and equal suffrage. Venizelos' proposal for plural and obligatory voting did not pass. His combination of the principles of obligation and plurality proved his influence by the Belgian 1893 reform and its liberal constitution. He argued that voting was both a citizen right and duty, the non-exercise of which should be punishable by law.⁶

Venizelos envisioned obligation as a measure that would protect the interests of both communities. On the one hand, it would guarantee that the island's Greek population, which outnumbered the Muslim population, would prevail. That would prevent acts of intimidation and threats directed at the Greek subjects from their Ottoman overlords, even though Ottoman military forces had withdrawn the year before. At the same time, obligatory voting appeared to be a tool that could 'secure the political representation of the Ottoman element', in the manner agreed to regarding quotas for

⁵ N.N.Saripolos, *Το Κρητικόν Συνταγματικόν Δίκαιον* [Cretan Constitutional Law], Athens: Raftani-Parageorgiou 1902, pp. 32-35

⁶ *Πρακτικά της προς παρασκευήν σχεδίου Πολιτεύματος Δεκαεξαμελούς Επιτροπής* [Proceedings of the 16-Member Committee in charge of the preparation of a draft Constitution], Chania 1901, p. 22 «*Η ψήφος είναι όχι μόνον δικαίωμα αλλά και υποχρέωσις του πολίτου, ο δε εκλογικός νόμος θέλει παράσχει ποινικὴν κύρωσιν εἰς τὴν ἐκτέλεσιν τῆς υποχρεώσεως ταύτης*»

minority representation.⁷ After all, proportional participation of Greeks and Turks in the administration of the island had been a commitment of Prince George to the Great Powers. Hence, obligatory voting would settle the question of including both Greeks and Turks in the political life of the new state.

However, the committee and the High Commissioner rejected Venizelos' proposal. Nine of the 16 members were against and seven in favour. Prince George denounced the idea as "*practically non-implementable*".⁸ He claimed that legal prosecution of non-voters would impose an excessive workload on the courts, which would have to abandon all their other tasks after every election.⁹ Indeed, even without compulsory voting, the new constitution turned out to be sufficient for preparing a peaceful and highly attended first election in the Cretan state.¹⁰ The enthusiasm of new voters, the stabilising effect of the single vote and, especially the principle of both majority and minority representation sent 85-90% of the 78,000 voters to the polls on 15 April 1901.¹¹ Hence, retrospectively, the idea of punishing abstainers became completely unnecessary.

The 1911 debate: A weapon against the Old Parties

Nevertheless, twelve years later, the idea returned, this time on the Greek mainland, as part of the preparations for the 1911 Constitution. The debate marked the beginning of a sporadic process that lasted until 1926, when obligatory voting was finally included in the election law. Compared to those in France and Belgium, the Greek discussions present two additional features. First, obligatory voting was both branded and defended as a tool for stabilising and protecting the parliamentary regime from repeated election boycotts by rival parties. In other words, the main target was less the advancement of socialists, than the risk posed to the regime by the

⁷ Ibid.

⁸ "πρακτικώς ανεφάρμοστον", Ibid., p. 40

⁹ Saripolos 1902, p. 34

¹⁰ Ibid., p. 36

¹¹ *Εφημερίς των Συζητήσεων της Βουλής* [Journal of Parliamentary Debates], 2 Apr. 1911, pp. 1548-1553

radical polarisation of the political system. Second, part of the argumentation was innovative, as politicians and constitutional jurists drew on ancient Greek scholarship to justify the theory of political obligation. This is the first time that classical republicanism was linked so explicitly to the modern sanctions against electoral abstention.

The 1911 constitutional assembly had resulted from an election where the conservative Old Parties had abstained.¹² The 28 November 1910 elections had been boycotted by the oligarchs in protest for Venizelos' unconstitutional dissolution of the parliament, which had been elected only few months before (August 1910). In fact, Venizelos, who had secured the support of the crown, wanted to capitalise on the military coup of 1909, which had brought him to power. The new election was aimed at achieving a majority for Venizelist candidates and clearing the parliament and administration of representatives of the old establishment.

As a result of the boycott, the liberal-republican Venizelists indeed achieved a landslide victory, yet their opponents' massive abstention was causing a legitimacy deficit. Compulsory voting appeared as an excellent device for preventing the continuous strategy of electoral abstention. Upon suggestion by Venizelist MP Athanasakis,¹³ the 30-member committee, chaired by the modernist Stephanos Dragoumis, accepted the principle in the draft constitution, presented on 25 February 1911. Article 66, on the right to vote, included the following: *'the exercise of the*

¹² E.Nikolakopoulos, N.Oikonomou, "Το εκλογικό βάπτισμα του Βενιζελισμού, Εκλογές 1910-1912" [The electoral baptism of Venizelism, Elections 1910-12], in *Proceedings of the Symposium on Eleftherios Venizelos (Dec 1986)*, Athens: ELIA/Benaki Museum 1988, pp.50-51; Th.Diamantopoulos (1997), *Η ελληνική πολιτική ζωή: εικοστός αιώνας. Από την προβενιζελική στη μεταπαπανδρεϊκή εποχή* [Greek political life: twentieth century. From the pro-Venizelian to the post-Papandreian era], Athens: Papazisi, pp. 73-75

¹³ Ioannis Athanasakis (1853-1953), MP for Attica and Voiotia, and Vice-Minister of Military Affairs under Venizelos (1917-20), was born in Portaria (Magnesia), studied Law in Athens and Paris and worked as a lawyer for thirty years in Cairo, Egypt. He moved to Athens in 1906 and was involved in community projects and charities, as well as Venizelos' project of educational reform. He also served as President of the Greek Red Cross for many years and was very active in founding hospitals and schools. V.Kourias, G Chatzikostas (1956), *Ioannis Athanasakis: Η zoe kai to ergon tou*, Athens: [unknown]

specified right is compulsory, in accordance with law regulations'.¹⁴ The first parliamentary discussion about compulsory voting came on 2 April 1911.

Of course, imposing sanctions on individual abstainers could not by itself prevent organised election boycotts as such.¹⁵ If the parties were determined to keep their support base away from the polls, nothing could stop them. Hence, by imposing an obligation to vote, the Venizelist reformers hoped at least to be able to rally their own supporters. In Athanasakis' proposal, the explicit intention was to bring to the polls all social classes, and especially urban voters of liberal and moderate convictions, who were more susceptible to abstaining. Obligatory voting would contribute *"to countering the wide, inexcusable neglectfulness, unfortunately observed especially among the developed classes, through which they wrong the polity and themselves"*.¹⁶ The implicit purpose was to counterbalance the power of the working classes, who usually adhered to socialist ideas, in the same way as Belgium and Germany had done or tried to do by imposing a voting obligation.

A second purpose was to protect the poor and peasant population from bribery and intimidation, which induced abstention. This would put an end to the clientelist dependence of poor voters on wealthy political candidates from the Old Parties and, conversely, boost the election chances for the new parties.¹⁷ As explained by MP Roufos, the obligation to vote would prevent the political exploitation of peasant workers and secure their unimpeded and spontaneous turnout at the polls.¹⁸ Obligatory voting was a first step towards ending electoral corruption and destroying the clientele structures of the Old Parties. Indignation against these had, after all, led

¹⁴ "Second Report of the Constitutional Reform Committee, 25 Feb. 1911" in M.Davais, G.Papaioannou, *Το ιστορικόν της αναθεώρησης του συντάγματος και τα επίσημα κείμενα «Το νέον σύνταγμα» (1911)* [History of the constitutional revision and official texts: "The new Constitution" (1911)], Athens: Kallitehnikí Epitheorisi 1911, p. 133 «*Ἡ ἄσκησις τοῦ δικαιώματος τούτου εἶνε ὑποχρεωτική, κατὰ τὰ ὑπὸ τοῦ νόμου εἰδικώτερον ὀρισθησόμενα*»

¹⁵ This is accepted for example by G.Charitakis (1925), *Περί αναλογικῆς ἐκλογῆς* [On proportional election], b1, Athens: Estia, p. 170

¹⁶ Second Report 1911. p. 133 «*πρὸς καταπολέμησιν τῆς παρὰ πολλοῖς, ἐκ τῶν ἀνεπτυγμένων ἰδίᾳ, δυστυχῶς τάξεων παρατηρουμένης ἀσυγγνώστου ὀλιγωρίας, δι' ἧς οὔτοι ἀδικοῦσι καὶ τὴν πολιτείαν καὶ ἑαυτούς*»

¹⁷ For clientelism in Greece until the early 20th century, see Ch.Lyrintzis, *Το τέλος των 'τζακιών': κοινωνία και πολιτική στην Αχαΐα του 19^{ου} αιώνα* [The end of nobility: society and politics in 19th century Achaia], Athens: Themelio 1991

¹⁸ JPD 1911, pp. 1548-1553

to the 1909 Goudi coup, and their replacement was a central objective of the subsequent reforms.

Arguments of precedence and authenticity

To provide a theoretical justification for the new idea, both the committee's written comment and Athanasakis's address to the assembly made an explicit reference to ancient political thought and practice. Indeed, the first thing that both texts underlined was that compulsory voting was an issue grounded, in theory and practice, in Greek antiquity. According to Athanasakis, it was '*a duty recognised ever since antiquity*'.¹⁹ The report stated that the new measure was '*a principle, whose origin is purely Greek*'²⁰ and added that an idea similar to compulsory voting had existed in the archaic Laws of Solon. These references matched Nikolaos N. Saripolos' excerpts from Aristophanes, Plato and Aristotle.²¹ Thus, the ancient Greek republican principle of participation in public affairs became a basis for electoral obligation in modern Greece.

Regardless of the intellectual value such links, invoking the authority of tradition was an effective argument *per se*. Firstly, the veneration for ancient democracy created an assuredness and added an element of superiority with regard to the democratic credentials of the idea. Secondly, establishing a 'Greek-ness' helped at investing compulsory voting with a sense of authenticity, especially in response to accusations that many regulations were copied and uncritically adopted from other countries. Thirdly, the elements of age and continuity made compulsory voting easier to digest. Therefore, Athanasakis stressed the fact that older legislation, namely, the 1833 Law on Municipalities, had already recognised voting as obligatory. Creating a precedent for the law, one rooted in a respected intellectual tradition, was a strong card for compulsory voting supporters.

¹⁹ Ibid. «καθήκον αναγνωρισμένο από την αρχαιότητα ακόμη»

²⁰ Ibid. «ἀρχή, τῆς οποίας ἄλλως τε ἡ καταγωγὴ εἶνε ἀκραιφνῶς Ἑλληνική»

²¹ N.N.Saripolos (1899), *La Démocratie et l'Élection Proportionnelle*, t.1, Paris: Arthur Rousseau, pp. 340-342, n.4

Another reason to introduce compulsory voting, supporters argued, was its successful enactment in other countries. First, they pointed to the success story of Belgium, where both election turnout was raised and the advance of the socialists turned back. In Germany, too, fear of the Socialist Party legitimised a strategy of compelling citizens to vote in the elections of 1907. Rather than enacting an explicit bill, the administration exerted pressure on civil servants through unofficial ‘instruction’ meetings in the workplace and statements concerning the ‘patriotic duty to vote’ repeated by interior ministers in each of the federal states.²² As a deterrent, they effectively intimidated at possible dismissals and reassignments. For MP Koutoupis, this example showed the ‘coercive nature’ of the measure, which led to the election of the ‘detested’ German Conservative Party. The political fall-out of compulsory voting indeed differed from one country to another.

Universalising universal suffrage

A central argument in favour of compulsory voting was that it enhanced the constitutional principle of universal suffrage. The idea of voting being a natural right had laid the ground for extending suffrage, which since 1864 had been an inherent part of Greek constitutional law. But abstention and voluntary voting undermined the realisation of universal suffrage and thus contravened the very scope of the Constitution.²³ Conversely, obligatory voting had the effect of ‘validating’ and highlighting universal suffrage. In this sense, it ‘reaffirmed popular sovereignty’ and disciplined the people with regard to exercising their political rights.²⁴ In general, the enforcement of universal suffrage was not foreign to Venizelos’ efforts to stabilise parliamentary institutions and to establish political and civil rights, with checks

²² R.Arsenschek (2003), *Der Kampf um die Wahlfreiheit im Kaiserreich*, Düsseldorf: Droste, pp. 209-15

²³ JPD 1911, pp. 1548-1553 «*ἔνε ἡ κύρωση τῆς καθολικῆς ψηφοφορίας καὶ τὸ ἀντιστάθμισμά τῆς*»

²⁴ Charitakis 1925, p. 170; A.Manesis, *Αἱ ἐγγυήσεις τηρήσεως τοῦ Συντάγματος, II*, [*The guarantees of constitutional adherence*] Thessaloniki : Sakkoula 1965, pp. 245-248

against the misappropriation of these rights.²⁵ For universal suffrage to be truly ‘dynamic’, all voters had to vote, and that was achieved through obligatory voting.

Another type of argument dealt with the concept of representation. Fears were voiced that ‘true’, ‘real’ or ‘full’ representation was at risk if participation in elections were to remain optional. If voting was only a right *sensu strictu*, “*everyone could decide not to vote, and then we would not have representation*”.²⁶ In other words, representation itself was at stake, since voluntary voting could potentially transform it to an empty letter. It was assumed that the representative system relied on a tacit agreement between citizen and state, which the former had to validate by participating in elections. In this sense, abstention constituted the greatest threat to parliamentarism. Consequently, the state's right of self-defense justified its means of forcing the vote through the threat of punishment on citizens who would break this ‘representation contract’.

Moreover, despite of the imposition of a legal obligation to vote, citizens still retained freedom of conscience and individual sovereignty, argued MP Andreou. Precisely because they exercised ‘their most sacred right’, citizens preserved their status as free persons. In fact, it was on the very basis of their individual sovereignty that they could be held responsible for breaking the ‘representation contract’. By imposing fines on abstainers, the state recognised and was defending the freedom of its citizens.

Objections: Principle and practice

This argument caused a fierce reaction by the opposition. For them, true voters were those who freely determined their political will and could decide without distractions not only which party to vote for, but also whether to participate in an election at all. The institution of compulsory voting would produce more voters, but less

²⁵ G.Kokkinos (1997), «Τα ελληνικά Συντάγματα και η ιδιότητα του πολίτη (1844-1927)» [The Greek Constitutions and Citizenship (1844-1927)], *Mnemon* 19, pp. 73-108

²⁶ JPD 1911, pp. 1548-1553 «*ἂν εἶναι μόνον δικαίωμα, μπορούν ὅλοι νὰ ἀποφασίσουν νὰ μὴν ψηφίσουν, καὶ τότε δέ θὰ ἔχομεν ἀντιπροσωπείαν*»

‘represented’ voters. «*Il y aurait, grâce au vote obligatoire, plus de votants qu’aujourd’hui, mais moins des ‘représentés’. L’électeur qui vote sous l’influence d’une contrainte n’est pas un véritable électeur ; il n’est plus un organe de l’Etat, mais bien une machine à voter*». ²⁷ This was a replay of the incompatibility between voting function and compulsory voting. According to the former, voters should be enlightened and self-motivated in order to become efficient organs of the state. ²⁸ With obligatory voting, it was quite the opposite: they were stripped of their capacity to motivate themselves and were reduced to brainless ‘voting machines’. Hence, MP Kladis claimed that basing the punishment of non-voters on the principle of function was misguided.

The French-educated jurist Saripolos stressed how immoral it was to impose obligatory voting in a majoritarian system. The reason for abstention was that the existing electoral procedures minimised the effectiveness of the votes and was the main cause of political indifference. Saripolos thought that obligatory voting without proportional representation failed to address the essence of the problem of abstention. Any increase in the number of voters was only artificial, not genuine. ²⁹ Hence, obligatory voting could not be considered seriously unless a form of voting that was worthy of the name (‘vote *utile*’) was introduced beforehand.

Furthermore, as the opposition argued, “*we must acknowledge that there exists a right of abstention*”. ³⁰ More specifically, MPs Koutoupis and Patsourakos pointed at the widespread abstention from parliamentary sessions observed among parliamentarians themselves. They said that usually only 200 out of 360 deputies showed up and, in this light, it would be hypocritical to deny the same right to citizens and impose on them a punishable obligation to participate. Representatives should function as a model for the represented, especially with regard to their political responsibility and public role. Simply put, abstention in modern Greek politics represented the status quo and, as a consequence, it should be viewed as an acceptable and legitimate choice for both parliamentarians and voters.

²⁷ Saripolos 1899, p. 339, drawing on Guizot and the Spanish jurist A.Posada.

²⁸ See the function-right controversy with regard to obligatory voting in my chapter on Belgium.

²⁹ Ibid. pp. 340-344; G.Meyer (1901), *Das parlamentarische Wahlrecht*, Berlin: Haering, p. 657

³⁰ JPD 1911, pp. 1548-1553

Still, the main objections to the clause were not based on principles, but on the practical difficulties of implementation. For example, it was considered unfair to force voters to make a long and arduous journey, when the means and expenses of travel were prohibitive. According to Venizelos, making voting obligatory required providing an efficient means of transportation to voters, as well as covering their travelling costs. In fact, a real fear existed that imposing an obligation to vote would lead to more vote-buying by candidates, who would offer to pay the expenses. Even the potential of the system to prevent clientelist voting was put in serious doubt. In reality, nothing could fully prevent money from being offered to poor voters, who still had the possibility to cast a blank ballot. Koutoupis' pessimistic view ruled out any possibility for circumventing the advantages of the rich and the dependence of the poor. The proposed system, he said, would end up imposing fines on the latter, while recognising abstention excuses to the former, for whom the financial sanctions would not be a great threat anyway.

Deciding on the types of sanctions and the competent juridical authority was another daunting problem. The choice between fines or removal from electoral rolls had to be discussed separately, while the issue of building a capable judicial mechanism to deal with prosecution and appeals also seemed too complicated. In fact, Venizelos himself argued that the high number of abstainers would create an unmanageable workload for the judiciary, with the upshot that the law would be unenforced. Thus, Venizelos continued, other measures more feasible and less controversial might offer a better solution to the problem of full representation.

Such alternative suggestions included abolishing the voting by spherules and introducing plural voting. Venizelos, who had been a proponent of compulsory voting in his homeland Crete in 1899, changed his mind in 1911 and opposed the idea on the grounds that it was unfeasible. To the contrary, he supported the idea of a single vote and representation of minorities, which had worked in the case of Crete.³¹ He claimed that the reforms had led to a high electoral turnout in the 1901 elections on the island, compared to the usually lower quotas on the mainland (85-90% and 65%,

³¹ JPD 1911, pp. 1548-1553

respectively). A new and fairer election system appeared to be the easiest and most effective solution, and the idea of authorising a special committee to take over the issue met with general agreement from both sides.

As a result, the 1911 assembly rejected the insertion of a clear-cut constitutional clause and, instead, adopted a declaration, under Article 66, stating that “*the law could establish the obligatory exercise of the right to vote*”.³² In other words, the Constitution established only the principle, and it was left to the common legislator to introduce a law that would establish an actual obligation and determine the sanctions for electoral abstention. However, as Venizelos had foreseen, there was no follow-up. The new election law of 1917 (1075) did not include any relevant provision. Still, compulsory voting was adopted again as a declaration in the constitutional draft of 1920,³³ which kept the memory of the idea alive, ahead of its re-emergence in the mid-1920s.

The 1920s debate: Fighting electoral boycotts

When the issue came into question again in 1923, the political antagonism between conservatives and liberals had become explosive. The establishment of a competitive party system through the introduction of the paper ballot in 1923 was marked by a radical opposition between liberal republicans and monarchists, culminating in a fierce dispute between Prime Minister Venizelos and King Constantine over Greece’s role in World War I (the National Schism).

Election boycotts had become a common strategy for both parties in almost every election since 1910.³⁴ In particular:

³² Ibid. «*ὁ νόμος δύναται νὰ καταστήσῃ ὑποχρεωτικὴν τὴν ἐνάσκησιν τοῦ ἐκλογικοῦ ὀ δικαιώματος*»

³³ A.Svolos (1928), *Το νέον Σύνταγμα καὶ αἱ βάσεις τοῦ πολιτεύματος [The new constitution and the foundations of the regime]*, Athens: Pirsou, p.276. The Constitution drafted by the 3rd Constitutional Assembly (1921-22) was abandoned due to a coup d’état in September 1922.

³⁴ Except 1912 and May 1915. *Ἱστορία τοῦ Ἑλληνικοῦ ἔθνους [History of the Greek Nation]* v.15, 1978, Athens: Ekdotiki Athinon, pp. 271-304; I. Contiades (1969), ‘Griechenland’ in D.Sternberger and B.Vogel (eds.), *Die Wahl der Parlamente und anderer Staatsorgane. Ein Handbuch*, b1, Berlin: Walter de Gruyter & Co, pp. 555-603

(a) On 28 November 1910, the Old Parties had abstained; they had already played a role in inserting compulsory voting into the 1911 Constitution.

(b) The elections of 6 December 1915 were boycotted by the Liberal Party. They were reacting against King Constantine I, who had unconstitutionally dissolved a Liberal majority parliament elected a few months earlier (31 May 1915) because he disagreed with Venizelos about joining the Entente in World War I. But French military intervention in 1917 forced Constantine to resign in favour of his son Alexander and restored the May 1915 parliamentarians, which became nicknamed '*Vouli ton Lazaron*' ('*the Lazarus Chamber*').

(c) Next, the Liberals boycotted a plebiscite on 22 November 1920, devised to authorise the return of Constantine I. Their abstention was a reaction against electoral manipulation, as well as their own controversial electoral defeat a few weeks earlier (1.11.1920); despite a very close election result, the Liberals had obtained less than one third of the electoral seats due to the majority system in use.³⁵

(d) On 16 December 1923, elections were again boycotted, this time by Anti-Venizelists, who foresaw their crushing defeat and a regime change. Indeed, these elections, coming after a Pro-Venizelist coup by Colonels Plastiras and Gonatas, were overshadowed by Constantine's reckless leadership of the campaign in Anatolia and the collapse of the Greek army in summer 1922, as well as a failed counter-revolution in October 1923. In addition, the redesign of electoral districts and the reinforcement of Venizelism by Asia Minor refugees left little doubts about the ensuing result.

December 1923: Abstention as 'political suicide'

In this context, obliging citizens to vote was for Venizelists a means to prevent their opponents from abstaining. It was the same motive that had led to the half-adoption of

³⁵ D.Dodos (2005), *Οι Εβραίοι της Θεσσαλονίκης στις εκλογές του Ελληνικού κράτους (The Jews of Thessaloniki in the elections of the Greeks state)*, Athens: Savvalas, pp. 134-136

obligatory voting in 1911, namely, prevention of election boycotts. Thus, a press war commenced between advocates and enemies of abstention a few weeks ahead of election day. On 1 December 1923, the chief of the September 1922 Revolution, Colonel Plastiras, published a decree announcing a series of measures against those who would abstain, a pre-emptive action against boycott organisers.³⁶ They included financial sanctions, as well as dismissals and suspensions of permanent jobs for civil servants, and a halting of promotions for military personnel, judicial officers and post and telecommunication employees.³⁷ However, his was more a rhetorical threat than a real intention, for the next day Plastiras quashed rumours about tracking down and prosecuting civil servants on the basis of their un-stamped election booklets.³⁸ Still, the creation of an atmosphere of intimidation was part of a vengeful attempt to suppress Anti-Venizelism.

At the same time, allegations circulated in the press that Asia Minor refugees would lose their support and benefits if they abstained. In fact, compulsory voting was seen as a tool to rally Venizelist voters and, in particular, refugees. The Greek resettlement and enfranchisement of over a million refugees (a fifth of Greece's population), who were die-hard Venizelists and loyal to the Republic, would later have a profound impact on the electoral geography.³⁹ Imposing a legal obligation would ensure these new voters' participation.

The explicit reasoning behind the idea was that full participation would safeguard the legitimacy of the upcoming election and the newborn Republic, which had to be protected from its domestic challenges. In fact, the revolutionary forces accused the monarchists that their intention to abstain was an aggressive act, believing that the monarchists were using it to justify an extra-parliamentary opposition after the elections and eventual pro-monarchist coup. Therefore, on the eve of election-day, Plastiras proclaimed:

³⁶ *Patris*, 1 Dec. 1923

³⁷ *Eleftheron Vima*, 8-15 Dec. 1923; *Patris*, 7 Dec. 1923

³⁸ *Ibid.*

³⁹ G.Mavrogordatos (1983), *Stillborn Republic: social coalitions and party strategies in Greece, 1922-1936*, Berkeley: University of California Press, pp. 198-297

“Abstention for political reasons is a crime against the Fatherland, because, instead of bridging the gap between the two sides and contributing to the termination of the domestic crisis, it will cause new complications and worries. Abstention is an effort to undermine the internal peace and quietness of the Fatherland and to cause civil strife. Even those who fight against the Revolution must participate in the elections. It is a sacred duty towards their own ideas.”⁴⁰

The reference to ‘abstention for political reasons’, rather than abstention in general, underlined that the principle was specifically designed to fight election boycotts. Furthermore, the identification of abstention with an anti-national attitude betrayed not only the general nationalist character of Venizelism, as opposed to passive ‘Constantinism’, but also an increasing concern about the electoral alignment of ethnic minorities. In fact, Venizelists were confronted with a traditionally Anti-Venizelist vote by the Jewish and Slavo-Macedonian minorities in Northern Greece.⁴¹ What’s more, these communities were supported by the Greek Communist Party, which had been founded in 1918. Hence, ethnic minorities and the Communists alike were held responsible for the evils of abstention and ‘non-Greekness’.

Alexandros Svolos and the anti-Venizelist reaction

The Anti-Venizelists reacted instantaneously. They proclaimed their ‘fundamental’ electoral liberties and argued that constitutional fairness and the right of peaceful protest dictated that the citizens were free to decide whether to vote or not. On these grounds, they denounced those Anti-Venizelists who planned to succumb to official pressure and participate in the polls, and declared *a priori* invalid the upcoming election result. They also appealed to the international community to watch and report

⁴⁰ Plastiras, *Ethinki Ora*, 15 Dec. 1923: «Η αποχή δια πολιτικούς λόγους είναι έγκλημα κατά της Πατρίδος, διότι αντί να γεφυρώση το μεταξύ των δύο μερίδων χάσμα και να συντελέσει εις την λήξιν της εσωτερικής κρίσεως, θα προκαλέση νέας περιπλοκάς και ανησυχίας. Η αποχή είναι προσπάθεια προς υπονόμεισιν της εσωτερικής γαλήνης και ησυχίας της Πατρίδος και πρόκλησις εις εμφυλίους διχονοίας. Και αυτοί οι καταπολεμούντες την Επανάστασιν πρέπει να μετάσχουν των εκλογών. Είναι ιερόν καθήκον και προς τας ιδέας των αυτών.»

⁴¹ Mavrogordatos 1983, pp. 246-261, where he also notes that, contrary to Jews and Slavo-Macedonians, the Muslim minority in Western Thrace was a Venizelist stronghold.

on the situation. Furthermore, the government, since it was instituted after a coup, lacked sufficient legitimacy to make changes that touched on constitutional principles, especially since the Constitution had been practically out of force since the September 1922 coup. The press abounded with ironic comments, with the Venizelists ridiculing abstainers and the opposition mocking the authorities for tampering with the electoral rolls and election cards.⁴² One of the ads punned sarcastically about ‘*the free axe of Democracy, ready to fall on the heads of (state) employees!*’⁴³ Among the social groups, civil servants received the most pressure from the administration to attend the polls.

The socialist-republican jurist Alexandros Svolos was the main opponent of obligatory voting on behalf of the Anti-Venizelist camp. He argued that compulsory voting was an aggressive act that would probably unleash more violence.⁴⁴ Only the ‘free will’ of the electorate could guarantee the equilibrium between the opposed forces. Elections did not need additional legitimacy, as long as they conformed to the legal standards that prohibited undue interference with voters’ rights. He added that compelling citizens to vote was not justified by the intention to fortify the regime against threats foreign and domestic. There was no need for legal sanctions, since any party that abstained was punished ‘naturally’ by not being able to oppose government decisions from inside the parliament. By attacking the government’s intention, Svolos was defending the right of political minorities against the authoritarian use of executive powers.

In addition, jurists argued that compulsory voting meant introducing “*all-foreign plants in Greece*”.⁴⁵ Colonel Gonatas had indeed spoken of compulsory voting as an institution that had been tested in countries like Belgium, Argentina and Czechoslovakia. However, in France, for example, the opinions in favour were centred around the problem of apathetic voters, who were the greatest danger to a

⁴² *Ethniki Ora*, 4-17 Dec. 1923, *Eleftheron Vema*, 7-17 Dec. 1923

⁴³ *Ethniki Ora*, 16 Dec. 1923 «*Εἶνε ὁ ἐλεύθερος πέλεκυς τῆς Δημοκρατίας, ὁ ἑτοιμος νὰ καταπέσει ὑπὲρ τὰς κεφαλὰς τῶν υπαλλήλων!*» Since there is no special word in Greek for Republic, the term «*Δημοκρατία*» is used with a capital ‘Δ’ for ‘Republic and with a small ‘δ’ for ‘democracy’. Here, the author uses the term with a capital D, but still refers to democracy.

⁴⁴ Svolos, *Ethniki Ora*, 5 Dec. 1923

⁴⁵ Kantianis, *ibid.* «*Όλα τὰ ξένα φυτὰ εἰς τὴν Ελλάδα*»

republic.⁴⁶ Svolos admitted that compulsory voting, under certain conditions, could have an important pedagogical value.⁴⁷ “*It boosts in the voter’s mind the sense of duty vis-à-vis his ideas and interests, which he supports through his political rights.*”⁴⁸ However, he noted, this pedagogical value cannot have an effect if the institution is introduced only two weeks ahead of the election.

Moreover, when abstention was a conscious choice, compulsory voting was not an adequate solution. “*Abstention ordered by parties, much as it also constitutes a default of duty, legally equivalent to individual abstention, is essentially a political deed, i.e. an electoral act of negative character, which cannot be judged in the same manner as individual (abstention).*”⁴⁹ Indeed, in other countries, the rationale was to fight the indifference and indolence of individual voters and not political abstention by entire groups, such as parties. In the Greek case, electoral abstention was an organised political phenomenon, linked perhaps to a general lack of trust in the representative system and the strategic benefit of missing the polls. Therefore, Svolos concluded, compulsory voting was an unnecessary, untimely and unworkable institution.

Obviously, the issue was too politicised to pass at that specific moment. Due to the wave of reactions, immediately after announcing his plan, Plastiras consulted constitutional law Professor Nicolaos N. Saripolos, who had been Svolos’ academic mentor at the University of Athens. Saripolos argued that, countries with compulsory voting combined it with a proportional electoral system, which provided more guarantees for the representation of minority opinions.⁵⁰ As Greece used a majority system, the system would be oppressive. Hence, the decree was quickly withdrawn, giving reason to opponents to think of it as a “*momentary stubbornness*”.⁵¹ However, December 1923 was going to be the only moment in Greek history when the issue

⁴⁶ Matesis, *ibid.*

⁴⁷ Svolos, *ibid.*

⁴⁸ Svolos 1928, p. 275

⁴⁹ A.Svolos (1935), *Συνταγματικόν Δίκαιον [Constitutional Law]*, τ.Β, 1, Athens: Pырsou, p. 64 «*Η υπό των κομμάτων διατασσόμενη αποχή, οσονδήποτε και αν είναι επίσης παράλειψις καθήκοντος, εξομοιούμενη νομικώς προς την ατομικήν αποχήν, είναι κατ’ουσίαν πολιτική πράξις, ενέργεια τουτέστιν εκλογική αρνητικής φύσεως, η οποία δεν δύναται να κριθῆ καθ’όν τρόπον και η ατομική.*»

⁵⁰ Saripolos, *Ethniki Ora*, 5 Dec. 1923; *Estia*, 3 Dec. 1923.

⁵¹ Matesis, *Ethniki Ora*, 5 Dec. 1923 «*στιγμαίον πείσμα*»

had stirred a short yet lively debate among all electoral stakeholders, politicians, jurists and, above all, the press.

The 1926 electoral law: Attracting the ‘best’ votes

The December 1923 elections produced a Venizelist assembly that was eager to do away with the monarchy. Indeed, on 25 March 1925, it proclaimed the Second Republic, which was ratified by a referendum a month later. However, the political alliances within Venizelism were fragile and governments struggled to survive amidst growing tensions between the Republican Left (Papanastasiou) and the Progressive and Conservative Liberals (Kafandares, Michalakopoulos), while Venizelos remained out of country.

In the meantime, the military was becoming more authoritarian and, in June 1925, General Pangalos overthrew the Liberal government, declared himself dictator and authorised a Papanastasiou-led committee to draft a new Constitution and election law. In April 1926, he even organised a presidential election and received approximately half of the eligible votes, although both Venizelists and Anti-Venizelists had boycotted it. Finally, in August 1926, under the weight of economic scandals, he was overthrown by General Kondylis. A general election was announced for November 1926 on the basis of the new election law prepared by the Papanastasiou committee.

According to the 1911 Constitution still in force, the parliament retained the possibility to impose a law on compulsory voting. Indeed, Election Law 3363, ratified on 2 September 1926, introduced, for the first time, obligatory voting and a proportional system.⁵² A financial sanction from 25 to 2,000 drachmas was imposed on abstainers, with the exception of those who did not live near the polling station or

⁵² Law 3363, Art.3, par.6, Government Gazette n.291, 2 Sep. 1926

were over 60 years old. The deliberations on the new election law in the summer 1925 and press articles of the time illustrate well its underlying republican rationale.⁵³

First, according to MP Voudouris (Republican), compulsory voting would counterbalance the “*high electoral abstention, which was not only in numbers but also in quality in both small and big cities*”.⁵⁴ As Papanastasiou added, it would “*assure the participation in voting of the best in town, who do not condescend to vote and leave elections in the lap of the disorderly element*”.⁵⁵ In particular, the clause would urge the participation of bourgeois Republicans and Liberal supporters of the Republic and, conversely, it would minimise the effect of anti-republican forces, including monarchists, military leaders, and communists.

Second, compulsory voting would prevent electoral corruption. It would inhibit those who wanted to persuade others not to vote for specific candidates. Indeed, the customary refusal of some voters to exercise their duty unless they were paid or had some ‘*personal benefit*’ had to stop. The sanctions against abstention were welcomed as a way to intimidate and target those voters who were thus rejecting or exploiting their right to vote. By protecting citizens from undue influence and bribery, the new measure would not harm but improve the quality of democracy.⁵⁶ As Papanastasiou declared, “*those abstaining from elections lose their right to protest against the decisions that are made in their absence; otherwise political life in a land cannot exist*”.⁵⁷ This statement described abstention as ‘political suicide’ and implied that having a political voice was conditional on participating in democratic procedures.

⁵³ History of the Greek Nation 1978, p. 304

⁵⁴ Session 18, 7th August 1925, *Επίσημα Πρακτικά επί της Ψηφίσεως του Συντάγματος [Official Proceedings on the Ratification of the Constitution]*. Athens: National Press 1932, pp. 118-121 «μεγάλη αποχή εκλογέων και ουχί μόνον εις αριθμόν αλλά και εις ποιότητα εις τε τας μικράς και μεγάλας πόλεις»

⁵⁵ Ibid. p.120 «θα εξασφαλίση την συμμετοχήν εις την ψηφοφορίαν των καλλιτέρων στοιχείων του τόπου, τα οποία δεν καταδέχονται να ψηφίσουν και αφήνουν την εκλογήν έρμαιον των ατάκτων στοιχείων»

⁵⁶ *Eleftheron Vema*, 4 Sep. 1926; *Proia*, 4 Sep. 1926

⁵⁷ *Eleytheron Vema*, 6 Sep. 1926

Once more, the opposition complained on moral and technical grounds. Kagias from the Liberals argued that compulsory participation undermined the integrity and inviolability of conscience of voters and created a burden for the Republic.⁵⁸ It was an insult to the common understanding of electoral liberty,⁵⁹ all the more so since the new system obliged voters to express their preference in ‘*an unknown language*’: that is, the new law did not only replace the old plurality with a proportional system, but had also introduced the use of paper ballots, instead of spherules, to which voters had yet to get accustomed.

In addition, major doubts were raised on the practical possibility to enforce sanctions. The very high number of abstentions (300,000-400,000) overburdened the courts as well as law enforcement.⁶⁰ Moreover, a corrupt and non-transparent administration would never punish anybody, because it was paradoxical to expect the winners of an election — who were in charge of administering justice — to take ‘revenge’ against voters,⁶¹ since the outcome had been positive for them, and they had no interest in punishing those who did not participate. On the contrary, they would be prone to excuse abstainers for practical or political reasons. In other words, enforcement would be practically impossible in countries that were ‘*insufficiently organised*’⁶² like Greece.

Indeed, compulsory voting remained a law only on paper, even during the very first elections governed by the new law. In November 1926, 39% of the electorate abstained;⁶³ hence, the fines became practically impossible to enforce. In fact, for the jurist, the non-application of sanctions summarised not only the failure of the institution, but also the collapse of the credibility of the legislator.

⁵⁸ Session 18, 7 Aug. 1925, *ibid.* footnote 51

⁵⁹ *Estia*, 4 Sep. 1926

⁶⁰ Gonatas, Session 18, 7 Aug. 1925, *ibid.* footnote 51

⁶¹ Svolos 1935, p. 64

⁶² Svolos 1928, p. 275 «*ατελώς οργανωμένα κράτη*»

⁶³ See the official statistics in Mavrogordatos 1983, p. 35

*“The lack of sanction is the main reason for the failure of compulsory voting everywhere, which is not different in the case where the law prescribes sanction, but does not enforce the relevant regulation, as it happens by us, and therefore it was better not to establish it, lest it would degenerate as a principle.”*⁶⁴

Kondylis was aware that compulsory voting was from a technical point of view⁶⁵ not a viable solution, whereas the proportional system was much more efficient at attracting voters to the polls. On one hand, proportionality encouraged parties to develop ideological nuances, in order to meet the interests of all social classes, contrary to their traditional opportunism. As a result, proportionality led to an upheaval of existing party structures and a reconfiguration of their electoral strength. Indeed, while the 1920 assembly included only two parties and the 1923 only one, at least eight parties entered parliament in 1926 and ten by 1928, in addition to a large number of independent candidates.

However, compulsory voting remained a non-enforced law in all elections until 1936, when General Metaxas established the “Fourth of August dictatorship”. The issue was generally forgotten, and even omitted from the new Constitution of 1927.⁶⁶ It re-emerged as a constitutional declaration in 1935, when the restored monarchy replaced the republican constitution with that of 1911. For the August 1928 poll, Venizelos restored the majority system,⁶⁷ but retained compulsory voting and other parts of the 1926 election law⁶⁸ without discussion, although one could have expected it to be abolished together with proportionality. In general, the excessive electoral engineering in the period 1926-1935, which produced new electoral laws every other year and a successive alternation between the systems of proportionality and plurality,

⁶⁴ I.Kyriakopoulos (1932), *Ελληνικόν Συνταγματικόν Δίκαιον [Greek Constitutional Law]*, Thessaloniki: Triantafyllou, pp. 289-294, 294 n.6 «*Η έλλειψη κυρώσεως αποτελεί την κυρίαν αιτίαν της αποτυχίας της υποχρεωτικής ψήφου πανταχού, αλλά δεν έχει και διάφορον αποτέλεσμα εν περιπτώσει, καθ’ην εν τω νόμω υπάρχει μεν κύρωσις, ουδόλως όμως εφαρμόζεται η σχετική περί αυτής διάταξις, ως συμβαίνει (άρθ.142) παρ’ημίν, και διά τούτο καλλίτερον ήτο να μη καθιερωθή, ίνα και ως αρχή εκφυλισθή*»

⁶⁵ *Proia*, 9 Sep. 1926

⁶⁶ See also K.Georgopoulos (1969), *Ελληνικόν Συνταγματικόν Δίκαιον [Greek Constitutional Law]*, t.1, Athens:[unknown], p. 59

⁶⁷ Legislative decree of 11 Jul. 1928 (Art.3, par.6)

⁶⁸ Government Gazette No.122, 11 Jul. 1928, Law Decree, Art.3, par.6

did not affect the clause on obligatory voting, which has been retained in every single election law since 1926.

Despite the mention of compulsory voting in constitutions and election laws alike, there has been no enforcement since its first enactment. The gap between the legal norm and its factual implementation reached such an extent, that for the June 1935 elections the Tsaldaris administration openly announced that abstention and campaigning in favour of abstention would not be prosecuted.⁶⁹ This failure to enforce sanctions effectively transformed compulsory voting into a dormant institution until the end of World War II.

A political tool against Communists (1946-1974)

The post-WWII discussion on compulsory voting revolves around the abstention of the Communist Party from the first post-war elections in March 1946, which marked the beginning of the Greek Civil War (1946-49).⁷⁰ The criminalisation of the leftist resistance, despite their unilateral compliance with the Varkiza Agreement on disarmament, as well as the continued ‘white terrorism’ by security forces in rural areas, lay at the basis of the decision for an election boycott. It was exacerbated by a justified fear that the elections would be manipulated in favour of right-wing forces, a fear that led centre-left forces also to join the abstention bloc (Kafantaris’ Progressives). This wave of abstention was supposed to be prevented by the introduction of two emergency laws (*‘anagkastikos nomos’*) in the two months preceding the election.⁷¹ They were introduced by the executive in a summary

⁶⁹ Svolos 1935, p. 64

⁷⁰ The boycotted 1946 elections have been a major theme in Greek post-war political discourse and were subject to various — often biased — historiographical interpretations. For a more recent and balanced account, see M.P.Lymeratos, «Η Αριστερά και οι εκλογές του 1946: οι προθέσεις, ο μύθος και η πραγματικότητα» [The Left and the 1946 elections: motives, myth and reality”, in *Οι εκλογές του 1946: σταθμός στην πολιτική ιστορία της σύγχρονης Ελλάδας [The 1946 Elections: a watershed in the political history of contemporary Greece]*, Athens: Konstantinos K.Karamanlis Foundation/Patakis 2008, pp. 116-149

⁷¹ 1020/1946 (Art.10), 1090/1946 (Art.5), Since the liberation from German occupation until the first post-war elections (Feb 1945 - Mar 1946), the legislative powers were held by the Vice-King and the Council of Ministers, who exercised them through extra-parliamentary constituent acts, emergency

procedure, without ever becoming subject to ratification by the parliament, and provided for an increase of abstention fines by twenty and fifty times. Eventually, abstention rose to an estimated 40%, of which 25% was politically motivated.⁷²

Thereafter, an excessive increase of fines targeting communist abstainers became the general trend and continued throughout the Cold War era. With another emergency ruling in the year following the elections, the Communist Party was declared illegal.⁷³ Throughout the post-Civil War era, anti-communism became a tool of ideological legitimation that fed into the central doctrine of ‘national-mindedness’ (*‘ethnikofrosyne’*). This idea differed from the traditional concept of nationalism, since the collective ideal here was not the ‘nation’, but the ‘national mindset’, which meant in essence the social, legitimate or ‘correct’ mindset, in other words, the anti-communist mindset.⁷⁴

The primary goal was to fight the communist threat, which was equated with ‘an external enemy, a foreign body inside the national family, a monster that undermined the integrity of the nation’.⁷⁵ Elections and voting were the principal weapons against this enemy, both formally, by strengthening bourgeois parliamentary institutions, and substantially, by devising a desirable end-result.⁷⁶ Another means used was civil employment: the state had control over the ‘lawful’ convictions of its employees, and it made sure they developed and transmitted the ideology of national-mindedness. Hence, special punishment for civil servants who abstained was introduced in a subsequent law.

laws and orders; see N.Alivizatos, «Οι πολιτικοί θεσμοί σε κρίση 1922-1974: όψεις της ελληνικής εμπειρίας» [*Political institutions in crisis 1922-1974: aspects of the Greek experience*], Athens: Themelio 1995, pp. 171-181

⁷² Measuring the exact percentage is difficult, due to double entries in the electoral rolls and multiple voting, but even more so because of the biased records; for example, the government then notoriously insisted that abstention had been only 9.3%. See Nikolakopoulos 2001, pp. 77-85

⁷³ Emergency Law 509 of 27 Dec. 1947

⁷⁴ K.Doxiades, «Η ιδεολογία στη μεταπολεμική Ελλάδα» [Ideology in post-war Greece], *Leviathan* 13 (1993), pp. 123-148, p. 126

⁷⁵ A.Elefantis, «Εθνικοφροσύνη: η ιδεολογία του τρόμου και της ενοχοποίησης» [National-mindedness: the ideology of terror and incrimination], Sakis Karagiorgas Foundation, *Η ελληνική κοινωνία κατά την πρώτη μεταπολεμική περίοδο (1945-1967)* [*The Greek society in the first post-war period (1945-1967)*], 4th Scientific Congress, Athens 1994, pp. 645-654

⁷⁶ Election rigging was notorious in the 1950s and 1960s; many suspicions were raised, for example, with regard to the abuse of the military vote and tampering with electoral rolls.

Compulsory voting became a political tool for the rightist government. It was incorporated as a declaration in the Constitution of 1952 (Art. 66), which was a copy of the 1911 Constitution. In addition, a new election law, issued one month before elections, multiplied the fines almost a hundred-fold (from 2,500 to 200,000 drachmas).⁷⁷ At the same time, women were given the right to vote.⁷⁸ The tendency of women to vote in favour of conservative parties seen in other countries was not reproduced in Greece, due to the non-involvement of the Church in political affairs, which also explains the absence of a religious cleavage.⁷⁹ The balance between right and centre-left forces remained more or less stable in the first elections in which women voted (1956).

Radicalizing prosecution: The 1956 decree

In the period of the 'Rightist State' (1952-1963), two new laws introduced even stricter punishment. The first, in 1956, charged offenders with a penalty of 2.5-200 drachmas and/or criminal sanctions, such as imprisonment of up to 6 months.⁸⁰ In addition, the government could remove their political rights and impose administrative restrictions, such as ineligibility for employment or promotion in the civil service; this provision also demonstrates how public employment was systematically used to promote the spirit of national-mindedness. In addition, offenders could be denied any type of professional licences. To receive a business licence or to qualify as a skilled worker, a citizen had to provide evidence that s/he was registered in the voting lists by showing her/his electoral booklet. Finally, tenants could be deprived of protection from landlords, a measure that aimed at putting additional social pressures on abstainers. The extreme heaviness of these sanctions

⁷⁷ Law 1878/1951 (Art. 30)

⁷⁸ Law 2159/1952. E.Nikolakopoulos 2001, «Καχεκτική Δημοκρατία: κόμματα και εκλογές 1946-1967 [Sick Democracy: parties and elections, 1946-1967], Athens: Patakis, p. 209

⁷⁹ J.Meynaud (1965), *Les forces politiques en Grèce*, Lausanne : Jean Meynaud, p. 64

⁸⁰ Law 3615/1956; K.Rallis (1969), *Ψήφος, εκλογαί και σύγχρονα εκλογικά συστήματα [Suffrage, elections and contemporary electoral systems]*, Athens: [unknown], p. 73-76

was acknowledged even by right-wing government deputies.⁸¹ Registration in the electoral rolls also became compulsory — with noncompliance subject to the same punishment — and the age of exemption rose from 60 to 65 years. Exempted were also those who lived further than 50km from their voting centre.

The discussion and ratification of the first decree was performed by a special legislative committee on 13 September 1956, in the first months of the Karamanlis government and not, as was usually the case, just prior to an election.⁸² The government proposal included compulsory voter registration, sanctions for failing to register or vote and urgent revision of the electoral rolls in the three largest cities. The Minister of Interior Makris (ERE-National Radical Union) explained that the imposition of these sanctions would remind citizens of their ‘*sacred*’ and ‘*moral duty*’ to vote.⁸³ Conversely, it would reprimand ‘bad citizens’ who abstained out of neglect, indifference, laziness, lack of opinion and procrastination.⁸⁴ These could be from any party or political affiliation and were not to be confused with abstainers who acted out of political conviction (although, it was added, this kind of abstention was also condemnable). For if anyone wanted to conscientiously object to a specific election, s/he had the opportunity to express their reaction actively, not passively, by casting a blank vote.

The aim was to achieve a full expression of the electoral body and reaffirm the democratic principle of universal suffrage. In particular, compulsoriness would reconsolidate the dismembered electorate and ensure that participation in elections was broad. Even if abstention was a natural phenomenon, Greece of all countries should dare to implement this innovation since it was the place where “*the concept of true democracy was born and developed*”.⁸⁵ The view was that this imposition of a legal obligation was not as coercive and frightening as some of the practices of Eastern Bloc countries. The aim was not, as there, to bring voter turnouts up to 99%, but to cover at least 60% of the electorate.

⁸¹ Vranopoulos (ERE), JPD, Session 32, 13 Sept. 1956, p. 633

⁸² *Ibid.*, pp. 631-642. The opposition was, in fact, wondering whether discussing the election law at that stage was not a proof that a new election would soon be underway.

⁸³ *Ibid.* p. 634

⁸⁴ Michas (ERE), *ibid.* p. 639

⁸⁵ JPD 1956. p. 639

The protest of Th.Tsatsos and Eliou

After questioning the competence of the committee to bring changes to the electoral law, the liberal-centrist opposition raised a number of objections against the principle of obligation. The first regarded its feasibility. They repeated older doubts about the courts being unable to manage thousand of offences, and also focused on the difficulty of seasonal workers to return to their permanent residence to register or to vote. As it stood, they said, the law benefitted those who lived permanently in industrial centres.⁸⁶ Thus, the details belied the committee's characterisation of the bill as intended to increase inclusivity. Elias Eliou, who came from the EDA, the political front of the banned Communist Party, was vitriolic.

Above all, he and other opponents defended the moral right of individuals and political groups not to attend polling. *“In the case where the conditions are set for distorting popular will, it is not only a political, but also a valid act and in accordance with the principle of popular sovereignty.”*⁸⁷ Hence, abstention was an exercise of conscience. *“Electoral abstention is exercising a right and the freedom of opinion”*.⁸⁸ By prohibiting it, the law violated freedom of political expression. They insisted that abstention was a valid way of ‘doing’ politics, a decision taken usually after ‘mature’ thought, and the only peaceful means of protest against all candidates or when the administration of the election was not trusted, which explained why abstention by political groups had been a frequent phenomenon in Greek election history. Finally, refusing to attend the polls was not comparable to casting a blank ballot, since blank ballots were either considered invalid or counted in favour of the majority vote.

⁸⁶ Eliou (EDA-Union of the Democratic Left), *ibid.*, p. 638

⁸⁷ *Ibid.* «εις περίπτωση κατά την οποία δημιουργούνται προϋποθέσεις παραμορφώσεως της λαϊκής θέλησεως, είναι πράξις όχι μόνον πολιτική, αλλά και θεμιτή και σύμφωνος προς την αρχήν της λαϊκής κυριαρχίας»

⁸⁸ Christopoulos (Liberal Democratic Union), *ibid.* p. 631 «η αποχή εκ των εκλογών είναι ενάσκησις δικαιώματος, είναι ελευθερία γνώμης»

In this context, stricter punishment of non-voters was doomed to be counterproductive. It would have forced the non-voters to turn against their peers or betray their own political beliefs. Hence, the law would distort the will of the people, whereas its ostensible aim was to better express that will. Moreover, it would probably cause politically motivated prosecutions of leftist partisans and end up dividing the people even more. Then again, the extreme disproportion of the sanctions was a sign that the government did not count on enforcing them. As with the previous decrees, the aim was simply to intimidate the abstainers, rather than actually push ahead with legal prosecution.⁸⁹ In addition, it was argued that an ‘empty’ regulation harmed the prestige of both the law and the legislative authority.⁹⁰

Themistoklis Tsatsos, who came from the Liberal Party, was a more moderate critic. He accepted compulsory voting as legitimate from a moral and political, but not a legal, point of view. To become justified, it required certain preconditions regarding transparency of the electoral procedure. The most important was to provide ‘security’ to voters and reassure them that the conduct and result of the elections would not be rigged, thus guaranteeing that their vote was worth casting. Another method to maintain transparency was to allow party representatives to control the registration process. Facilitating the voting procedure would also prove that the government had a serious intention to listening to the voice of the people. In any case, unless an election was corruption-free, compulsory voting had no place in it.

More ‘ineffective’ sanctions (1956-73)

In 1962, a new decree established additional sanctions: the prison sentence was raised to a maximum of twelve months and election booklets were now requested for issuing driving licences, passports and IDs.⁹¹ Potentially, the offender could also lose her/his political rights for 1-3 years. The age of exemption rose again, to 70 years. Of these sanctions, only the conditional issue of passports was enforced, which might have

⁸⁹ Eliou, *ibid.* p. 637

⁹⁰ Tsatsos, *ibid.* p. 636

⁹¹ Law 4274/1962; Committee Report 1962, p. 436

been linked to the unwillingness of the Greek state to allow suspected communists to migrate as *Gastarbeiter* to Germany.⁹² The reason for enhancing the provisions against abstention was to stimulate the ‘indifferent’ urban population, who were politically discouraged by the lack of clear party ideologies and by the perceived increase in violence and fraud.⁹³ On the basis of such allegations, the opposition again denounced the amendment as illegitimate and ‘arbitrary’.⁹⁴

Few, if any, convictions for violations of obligatory voting were only recorded against the Communist Party members and sympathisers who had abstained in the 1946 elections, so much so that jurists noticed “*the measure proved to be ineffective, and the only legal consequence of the provisions on the obligation of voting is their infringement*”.⁹⁵ The number of abstainers was simply too high; for example, in the May 1958 election approximately 1,250,000 voters stayed home (24.5%).⁹⁶ This was more or less the average abstention rate during the four elections in the 1950s (1951, 1952, 1956, 1958). In the 1960s, the high political stakes involved in each contest brought the average rate lower, to around 18% (1961, 1963, 1964).

Despite its ineffectiveness, the Constitutions of 1968 and 1973 incorporated a relevant provision (Art. 56, § 4). Whereas the Constitutions of 1911 and 1952 included only a declaration that “*the legislator can make the exercise of the voting right obligatory*” (Art. 66), the junta Constitutions for the first time mention clearly that “*the exercise of the voting right is obligatory*”.⁹⁷ Jurists argue that this is a significant change, for it ‘solves’ definitely the question of the nature of the vote, compared to the previous wording, which was only a suggestion for ‘potential’ establishment of obligatory

⁹² I am grateful to Nikos Marantzidis for this remark.

⁹³ G.Daskalakis (1958), *Πολιτικά Κόμματα και Δημοκρατία [Political Parties and Democracy]*, Athens: [unknown], pp. 9-15, 61-68

⁹⁴ Committee Proceedings 6 Nov. 1962, p. 808

⁹⁵ Ch.Sgouritsas (1959), *Συνταγματικόν Δίκαιον [Constitutional Law]*, t.1, Athens: Zacharopoulou, p. 228 «το μέτρον απεδείχθη αλυσιτελές, και η μόνη νομική συνέπεια των περί υποχρεωτικότητας της ψηφοφορίας διατάξεων είναι η παραβίασις αυτών»

⁹⁶ Manesis 1965, p. 247, n.26

⁹⁷ «Η άσκησης του εκλογικού δικαιώματος είναι υποχρεωτική»

voting.⁹⁸ The clear-cut provision, as imported into the junta Constitutions, remained unchanged thereafter and is included in the current constitutional law of Greece.

The revival of compulsory voting during the Colonels' junta can be interpreted in two ways. First, it served as a superficial enforcement of universal suffrage that aimed to distract attention away from the actual curtailment of voting rights for certain categories of citizens, mainly those convicted of 'political crimes' and other convicts.⁹⁹ Alternatively, it can be seen as part of the Colonels' restless efforts to seek legitimacy for their authoritarian regime by appealing to the public, especially the conservative voters, after their continuous failures in the past to gain the official support of the parliamentary right and the support of the Crown.¹⁰⁰ However, again the clause had only a symbolic value since those who abstained in the plebiscite of 29 September 1968 (which was meant to confirm public support for the new constitution) were granted amnesty. Hence, the almost half a century after its introduction, compulsory voting remained an empty letter, with only sporadic, targeted application during the times of the right-wing state.

Concluding note

The history of compulsory voting in Greece can be divided into three phases from the point of view of its justification and practice. The first phase stretched from 1911 until 1936 and concerned the legal establishment of the principle and its conceptual demarcation as a republican idea. As such, it was linked to the ancient Greek ideal of political participation and reflected the ideological orientation of Venizelism. From a realist point of view, it aimed at putting an end to the illegitimate influence of the Old Party oligarchs and disrupting their attempts to boycott the elections. The

⁹⁸ D.Tsatsos, *Εισηγήσεις Συνταγματικού Δικαίου* [Constitutional Law Writings], Thessaloniki: Paratiritis 1980, p. 258

⁹⁹ Alivizatos 1995, pp. 660-661

¹⁰⁰ For the Colonels' quest for legitimacy, see N.Diamandouros, *The 1974 transition from authoritarian to democratic rule in Greece: A background and interpretation from a southern European perspective*, Bologna: John Hopkins University, Bologna Center 1981; also available in Greek in *The Greek Review of Social Research*, no.49 (1983), p. 52-87

politicisation of abstention and voting enforcement alike corrupted its republican character. Still, the key argument against compulsory voting during that phase was the practical difficulty of imposing sanctions, due to the very high number of offenders and the impossibility of swaying their collective determination to boycott elections.

The second phase of the compulsory voting discourse spanned from the watershed of the 1946 election with the abstention of communists until the end of the military rule in 1973. The law continued to be unenforced, yet the possible sanctions became much stricter, in a concerted effort to exclude, intimidate and subjugate the extra-parliamentary Left. As a result, the rhetoric against compulsory voting was much more pronounced and drew on freedom of expression as a human right. Deputies of the centre-left claimed that, in cases where the state does not guarantee transparency and trust in electoral operations, abstention is a conscious and valid political act.

The types of sanctions that were discussed in connection with abstention ranged from financial and criminal to administrative measures. From 1926 until 1956, only fines were imposed, yet they tended to rise disproportionately in the post-war years and were never collected. After 1956, voters who abstained were additionally at risk of serving time in prison or losing their political rights. In addition, as housing tenants they could lose the protection granted by the state against abusive landlords. This kind of prosecution was also never put into effect; however, the administrative sanctions seemed to have been more operational. Citizens were required to produce a personal election booklet as proof of having participated in elections. This was needed in order to become employed in the civil service, or to obtain a professional or business licence, a driving licence, a passport or an identity card. There is evidence that at least the passport requirement was upheld in the following years.

It is not surprising that some of the normative arguments both for and against compulsory voting are repeated in these two phases of the debate. For example, both the Anti-Venezelist Right in the 1920s and the centre-left parties in the 1950s stressed abstention as an inviolable right inasmuch as it constitutes a political act of an organised party. What is interesting, however, is that the political forces participating in the debate switch sides from one debate to another. For example, the Right was

opposed to the introduction of compulsory voting in 1923-26, yet it preserved and strengthened the law when it came to power in 1946, 1956 and 1962. This observation confirms once more the Greek singularity in conceiving and using compulsory voting as a tool against organised electoral boycotts (by Anti-Venizelists and by Communists in the interwar and post-war periods, respectively).

Hence, who supports and who rejects the idea was a matter of political contingency. The divide seemed to be drawn along government-opposition lines, bearing in mind that the former was responsible for organising elections, controlling the judiciary (which was in charge of imposing sanctions), and mobilising the police (which helped administer the sanctions). The opposition, for its part, defended abstention, which was the only way to obstruct the political status quo and protest against electoral manipulation. In this sense, the Greek case provides nothing new in terms of theoretical positions on the nature of the vote or the content of good citizenship. In fact, Greek jurists seem to have simplistically assumed that obligatory voting legitimacy is derived from the traditional idea of voting as a public function, as opposed to a natural right. This contrasts with the original French and Belgian interpretations, whereby the liberal concept of voting function presumed that voters are already by themselves enlightened and should therefore not be legally obliged to fulfill their duty. In Greece, the legal theories of suffrage were obviously not analysed in depth.

However, the Greek case offers an important proof of the conditionality of compulsory voting. Specifically, the Greek interlocutors underlined that abstention is a valid political act *when*:

- (1) voters do not have easy access to polling stations or electoral materials
- (2) the administration cannot guarantee trustworthy electoral results
- (3) the electoral system does not make every vote count (e.g. as in a majoritarian system)
- (4) there is general distrust of the democratic/representative institutions

Conversely, compulsory voting can be justified *only if*:

- (1) it is combined with a proportional electoral system
- (2) it is used against individual neglect and not 'political abstention' by groups
- (3) it is followed by enforcement of effective and proportional sanctions for abstention
- (4) the state is sufficiently well-organised to apply the sanctions in a non-discriminatory manner

In this sense, Greece in the first two phases lends itself as an excellent case study for understanding the reception and impact of compulsory voting in authoritarian and semi-authoritarian states. In that sense, it resembles the practices encountered in the Soviet states, or in East Germany in the post-war period. The enforcement of voting in non-democratic states today may also be seen with this kind of suspicion.

Yet, the story of compulsory voting in Greece does not stop here. A third phase opened with the overthrow of the Colonels in 1974 and the incipient democratic transition. In this phase, the sides to the debate became less rigid, as they switched repeatedly, reproducing the government-opposition division motif. A new subject, the right to cast and validity of blank ballots, became an issue of contention, and one which to some extent still remains unresolved.

Chapter 7: The politics of compulsory voting in the post-war era

After the 1970s, the issue of obligatory voting fell into disfavour in most countries: it was either neglected or questioned, while the Netherlands went as far as to remove it completely from their Constitution (1970).¹ This trend was linked to contextual factors too, such as the rise of rights-based liberal politics in Europe.² In Greece and Belgium, the debates followed the same path, albeit with different nuances between the two countries and individual debates.

A. Greece: The 1975 constitutional debate

The collapse of the Greek Colonels' junta in 1974 brought a democratic transition (*'metapolitefsi'*), which included the legalisation of the Communist Party, a general amnesty, a republic referendum that abolished the monarchy and other restorative measures. Legislative elections were held in November and won by the New Democracy party of Constantine Karamanlis, while a constitutional reform followed the next year. In the new text, compulsory voting was preserved (Art. 51, § 5), despite its legacy as an anti-Communist tool. It was supported by the right-wing government, reflecting a selective continuation of some of its pre-junta policies. These were met with resistance by the centrist-socialist opposition, who launched a passionate attack on the institution of compulsory voting as undemocratic and arbitrary. To understand the arguments of the two sides, it is useful to bear in mind the repressive legacy of compulsory voting from 1946 to 1967, where elections had not been entirely free and fair anyway.

In his address to the plenary session in spring 1975, the opposition's general representative in the constitutional committee, Dimitris Tsatsos (Centre Union - New

¹ See second part of this chapter.

² See also the postwar scholarly underestimation of the voting act, presented in the next chapter.

Forces) grounded his objection against compulsory voting on two main points. First, he acknowledged that, although compulsory voting might be considered a democratic principle, this depended substantially on which concept of democracy we adopt.

*“Democracy is not going to lean on the shoulders of those who do not care and whom we pressure to fulfil their democratic duty. Democracy is going to lean on those who will show up and accomplish their democratic duties without pressure and sanctions”.*³

In other words, democracy was understood as a consequence of voluntary and un-coerced participation. Unless voters were spontaneously motivated to vote, they had no real value for the new regime. George Mavros, the leader of the Centre Union, continued this line of thought, stating: *“It is not possible to found the Republic on the exercise of rights under pressure; institutions should be left to function freely”.*⁴ It is interesting how the speaker here makes use of a feature of Greek where ‘demokratia’ can be used both for the procedural concept of democracy and to denote a republic, in the latter case with a capital ‘D’. In any case, the common line was that, to function properly, the young democratic Republic needed a more genuine engagement of its citizens in public affairs.

Second, Tsatsos argued that abstention could become, under certain circumstances, *“a weapon of political struggle”.*⁵ This statement becomes intelligible in the context of the democratic transition from the repressive era, when elections had not been entirely free and fair. For Apostolos Kaklamanis (PASOK-Panhellenic Socialist Movement), prohibiting abstention was inconceivable, and criminalising it arbitrary. *Compelling* participation, he argued, was similar to *prohibiting* participation, and both were attributes of totalitarian states. Abstention from elections was in many instances *‘the political act par excellence’.*⁶ Hence, the first socialists of the Greek Third Republic conceptualised electoral abstention *per se* as a way to ‘do’ politics, since it can be a conscious choice carrying a firm political message (of opposition/renouncement). For

³ *Proceedings of the Plenary Sessions on the 1975 Constitution*, Athens: National Press 1975, p. 120

⁴ *Ibid.* p. 121

⁵ *Ibid.* p. 116

⁶ *Ibid.* p. 120

this reason, PASOK members Pnevmatikos, Kaklamanis and Koutsocheras pleaded — unsuccessfully — for the removal of the article, during the sessions of the preparatory sub-committee and committee.⁷

A third, more practical reason to abolish compulsory voting was that the system had never worked efficiently. After every election, the governments — even during the military dictatorship — had granted an amnesty to all abstainers.⁸ Nevertheless, without looking further into ways to strengthen enforcement, the parliament consented to maintaining the principle. The main reasons were that it was regarded as contributing to the political education of the people, reducing electoral abstention and bringing about a greater realisation of universal suffrage.⁹ The fact that it seemed impossible to enforce in practice did not play a big role in a state that was to become very much accustomed to an excess of virtual laws.

The new electoral code of 1974 upheld the previous criminal and administrative sanctions for legislative elections,¹⁰ and extended them to referendums and local elections.¹¹ The law also included compulsory voter registration.¹² Exemptions were extended to voters above age 70 and those residing further than 200km from their voting centres on election-day. As mentioned, the criminal sanctions were too strict and had fallen into complete disuse. But the application of administrative sanctions, in particular, the denial of passports to abstainers, was not completely over, although

⁷ Apostolos Kaklamanis and Aggelos Pnevmatikos (PASOK); see *Proceedings of Subcommittees of the Constitutional Revision*, Athens 1975, p. 514-516; I.Koutsoxeras and I.Sergakis (PASOK), *Proceedings of the Committee of the Constitutional Revision*, Athens 1975, p. 113-114

⁸ Indeed, G.Mavros and K.Stefanakis had served as counsels for the defense of the abstention of D.Papaspyrou in Livadeia.

⁹ G.Papadimitriou, «Η αρχή της υποχρεωτικής ψηφοφορίας: μερικά βασικά ζητήματα» [The principle of compulsory voting: some basic issues], *Epitheoreses Demosiou Dikaiou kai Dioiketiku Dikaiou*, 25 (3), 1981, pp. 198-209; also appears in, *Συνταγματικό Δίκαιο. Τα όργανα του κράτους. Το εκλογικό σώμα* [Constitutional Law. State functions. The electorate], t.1, Athens: Sakkoula 1981, pp. 99-111

¹⁰ Presidential Decree 650/1974. Potential sanctions included 1-12 months imprisonment, removal of political rights (criminal), ineligibility for civil service appointment or promotion, denial of tenant protection or professional licences (administrative); these sanctions were first introduced in 1956. The previous election laws (1926-1956) had included only fines. In 1962, potential denial of driving licence, passport and ID was also established.

¹¹ Referendum law 350/1976, Local administration law 1065/1980.

¹² Voter registration in electoral rolls became passive and based on municipal registries; only several years later was it made into law, 2623/1998.

diminishing.¹³ These were a relic of an anomalous political past, used to discriminate against those who had supported the 1946 communist abstention. This system of punishment was said to have established special “*administrative powers that enabled the repression of citizens and encouraged some to profit in their own way from voting evasion*” (*ψηφοδιαφυγή*).¹⁴ The term ‘voting evasion’ here clearly echoes the concept of ‘tax evasion’ and implies both that citizens have a justified obligation to vote, yet the system of punishment was abused in a manner similar to the practices of corrupt tax officials.

Therefore, scholars held administrative sanctions to be unconstitutional and an infringement upon basic human rights.¹⁵ For example, the denial of professional licenses was an impediment to the ‘personality’ right of free development as well as the right to work. Similarly, the denial of passports violated the freedom of movement, including the right to leave the country and return. The ‘pedagogical’ character of the principle justified only light sanctions. For example, a fine of 1,000 to 5,000 drachmas was preferred and introduced in local elections in 1980.¹⁶ For all of these reasons, throughout the 1980s many constitutional lawyers demanded a reduction in sanctions or their abolition altogether.¹⁷

Gradual abolition since the 1980s

During the 1980s and the Andreas Papandreou government, the application of sanctions generally seems to have been limited.¹⁸ This is confirmed by the significant abstention rates (19-20%, 1974-1989) that were not followed by any mass prosecution.¹⁹ In 1985, the denial of IDs and tenant protection was removed from the

¹³ Papadimitriou 1981, pp. 207-208

¹⁴ F.Vegleris, *Η ιδιαίτερη φύση του εκλογικού δικαίου [The special nature of electoral law]*, Athens: Sakkoula 1992, pp. 61-63

¹⁵ P.Pararas, *Σύνταγμα 1975 –Corpus [Constitution 1975 – Corpus]*, II, Art.51-80, Athens : Sakkoula 1982, pp. 33-35

¹⁶ Local Election Law 1065/1980, art.33, par.3

¹⁷ E.g. Papadimitriou, D.Tsatsos, Pararas, Vegleris.

¹⁸ In the 1974 elections, sanctions were allegedly applied at least in Rhodopi Prefecture, according to Prof. Diamantopoulos, interview 6 Dec. 2006

¹⁹ Vegleris 1992, pp. 61-63

election law. In general, there were hardly any political discussions on compulsory voting in Greece in that era, nor in the 1986 constitutional reform. The lack of interest in compulsory voting during that period is related to the authoritarian legacy of compulsory voting and the practical difficulties of enforcement. An additional reason may have been the fact that the two parties in power, New Democracy and PASOK, had created a very competitive political environment and strong clientele mechanisms that could mobilise voters without the need for a legal enforcement of participation.²⁰

The issue came up again in public discourse only during the by-elections of 5 April 1992. A contentious trial involving MP Dimitris Tsovolas from PASOK in the Koskotas financial scandal had led to his dismissal, the refusal of PASOK to replace him in protest, and the call of a run-off election for his electoral seat in Athens B. Despite the ruling New Democracy's urgent need of an extra seat to increase its marginal parliamentary majority (of only one seat), they decided not to contest the election at all, in order to dismiss allegations about their involvement in Tsovolas' conviction. Therefore, PM Konstantinos Mitsotakis asked New Democracy members to abstain. In connection with these tactics, he announced his intention to withdraw the law that prescribed sanctions for not voting.²¹ After a low-turnout election and a collection of protest votes by the controversial president of the Centre Union (Vasilis Leventis), the Tsovolas' seat went again to PASOK (Giorgos Magkakis) and few months later the New Democracy government collapsed over the 'Macedonia' question. The 1992 incident was major proof that the legal enforcement of compulsory voting was completely ineffective.

Therefore, some years later, a limited reform of compulsory voting took place. In 1999, administrative sanctions were finally removed from the electoral law.²² In the 2001 constitutional revision, the declaration that enabled electoral legislation to impose sanctions was abolished. A few small parties, the Communist Party of Greece²³ and The Liberals, pushed in this direction. MP Stefanos Manos argued that

²⁰ Again, I owe this remark primarily to Nikos Marantzidis.

²¹ M. Pikramenos, *"Η αρχή της ελεύθερης και ανόθευτης εκδήλωσης της λαϊκής θέλησης"* [*The principle of free and fair expression of the popular will*], Athens: Sakkoulas 1993, p. 18

²² Presidential Decree 55/1999, art.108, par.4

²³ MP A.Skylakos (KKE), Session PKA', Hellenic Parliament, 21 Feb. 2001, p. 5194

*“The right to vote, gentlemen, is completed only when it includes the right not to exercise it. This holds for every right”.*²⁴ Keeping such a provision without effective sanctions, he continued, was useless, while the parliament did not have the courage to impose sanctions even in a case where *“citizens would not care at all about us”*.²⁵ Only opposition MP Nerantzes (New Democracy) objected to removing the declaration, on the grounds that this would render compulsory voting a pure *“academicism. It’s a light that does not shine, a fire that gives no heat”*.²⁶

For his part, Minister of Culture E.Venizelos (PASOK) responded that removing the declaration and allowing compulsoriness to become an incomplete clause was in line with the pedagogical function of the Constitution.²⁷ He stressed that voting was a functional, and not a personal right; it did not permit its holder to dispose it as s/he wished, but was a task to be exercised collectively within the framework of the electoral body. Hence, although the Constitution still mentions that voting is obligatory, the additional provision that invited the legislature to impose sanctions was removed from the 2001 Constitution. According to juridical interpretations, this change has made the imposition of sanctions unconstitutional²⁸ and, in some ways, it has opened the door for a complete abolition of compulsory voting in Greece.

The necessity of blank ballots

During the 1980s, the centre-left’s support for voluntary voting shifted into support for the right to cast a blank ballot. Constitutional jurists, since at that time they had

²⁴ MP S.Manos (The Liberals), Session PKA’, Hellenic Parliament, 21 Feb. 2001, p. 5211 *«Το δικαίωμα της ψήφου, κύριοι συνάδελφοι, ολοκληρώνεται μόνο όταν περιλαμβάνει και το δικαίωμα της μη άσκησης του. Αυτό ισχύει για όλα τα δικαιώματα.»*

²⁵ Ibid. *«Μήπως να έχουμε και την πισινή [sic] να την επαναφέρουμε αν δούμε ότι οι πολίτες αδιαφορούν τελείως για εμάς;»*

²⁶ MP A.Nerantzes (New Democracy), Session PKB’, Hellenic Parliament, 22 Feb. 2001, p. 5238. *«Αλλά αυτή η ρύθμιση μεταπηδά σε ακαδημαϊσμό. Είναι φως που δεν φωτίζει, φωτιά που δεν καίει.»*

²⁷ MP E.Venizelos (PASOK), Session PKB’, Hellenic Parliament, 22 Feb. 2001, p. 5245 *«Πιστεύω επίσης ότι το Σύνταγμα πρέπει να επιτελεί τον παιδαγωγικό του ρόλο. Έτσι εξηγείται και η διατήρηση ως ατελούς διάταξης, γιατί δεν υπάρχει κύρωση, της παραγράφου 5 του άρθρου 51 για την υποχρεωτικότητα της ψήφου, γιατί το εκλογικό δικαίωμα, είναι ένα λειτουργικό δικαίωμα, δεν είναι ένα προσωπικό δικαίωμα έτσι ώστε ο δικαιούχος του να έχει εξουσία διάθεσης. Είναι μία αρμοδιότητα που ασκείται συλλογικά στο πλαίσιο του εκλογικού σώματος.»*

²⁸ K.Mavrias, *Συνταγματικό Δίκαιο [Constitutional Law]*, Athens: Sakkoulas 2005, pp. 414-417

still failed to achieve an abolition of sanctions, engaged in a campaign to defend the blank vote as a guarantee of freedom of political choice. The background was a decision by the *European Court of Human Rights* in 1972.²⁹ According to the ruling, the option of casting a blank or spoilt ballot ensured that compulsory voting laws did not violate personal rights and liberties. In particular, the plaintiff from Austria had claimed that compulsory voting infringed on the freedom of conscience. By its negative judgment, however, the Court established the blank ballot as a form of ‘conscientious objection’ to compulsory voting.

In Greece, an electoral dispute following the 1986 municipal elections triggered an extensive discussion about the normative value of blank ballots in election procedures. To settle the dispute, an official opinion was issued that blank votes were not only invalid, but also unnecessary to hand to voters during polling³⁰. Authorities claimed that offering a blank option was essentially facilitating the non-use of electoral rights. By prescribing the obligation to vote, the Constitution implied that voters had to use their electoral rights in a substantial manner, that is, not only by attending the polls, but also by casting a ‘positive’ vote. The concept of voting was considered a synecdoche for expressing a preference and approving of some candidate or party. It certainly was not intended to mean that all candidates could be rejected via a blank vote, which was tantamount to refusing the exercise of voting.³¹ Such a strict reading of compulsory voting motivated the Greek Council of State to waive polling officers' obligation to distribute blank ballots, thus resulting in a de facto prohibition of blank voting.

Some jurists reacted to this ruling and tried to defend the political value of the blank vote. Contrary to the official ruling, which classified it as a ‘negative’ expression of

²⁹ ECHR, Decision of 22 April 1965, *X v. Austria*, Application n.1718/62, Ann. 8, p. 173 ; see also ECHR, Decision of 22 March 1972, *X v. Austria*, Application n.4982/71, Ann. 15, p. 473

³⁰ In Greece, voters do not receive a single voting slip with a list of all the parties and candidates, like in most countries, but many separate ballot papers, one for each party. They vote by selecting one of them, marking the candidate of their choice, folding and inserting it in the voting envelope that goes into the ballot box. Unused ballots are thrown away in a trash bag that exists inside the voting booth. In addition to these ballot papers of parties, voters are also supposed to receive one blank piece of paper, i.e. the blank ballot.

³¹ Council of State, Decision 3705/87, *To Syntagma* 1988, pp. 322-324

political will,³² they argued that the blank vote contained positive value if one considered its multiple constructive uses.³³ For example, when all available candidates adopted undemocratic views, or when there was only one candidate or party to select, casting a blank vote became the only possible ‘positive’ action for a democratic regime. In addition, it offered the only chance to criticise, through the election procedure, authoritarian or manipulative leaders, untrustworthy parties or an unredeemable low point in political life. Even if it was used as an explicit negation of the regime, it pointed positively to a need for radical political readjustments to deal with the lack of legitimacy of policies or institutions.³⁴ Finally, casting a blank ballot could even be a legitimate party policy in cases where small parties were subject to extraordinary pressures to collaborate. In these kinds of situations, the blank vote indeed played a constructive role.

Second, to counter the charge that the principle of obligation prohibited blank ballots, opponents sought a logical reconciliation between compulsory and blank voting. It was acknowledged that compulsory voting served to sharpen the voters’ sense of duty to support their personal ideas and interests through use of their political rights.³⁵ However, this objective required a balance between sanctions and incentives; one such incentive was the blank ballot.³⁶ Respect for the voters’ original ‘ideas and interests’ necessitated making available several options. Because compulsory voting already reduced the possibilities to protest through abstention, the blank vote was an indispensable alternative in order to guarantee the free and fair expression of popular will.³⁷ Otherwise, voters who wished to express a negative vote would be forced to spoil their ballots, which might not have been their initial intent. Blank voting was a necessary exit option in a compulsory voting system. So, paradoxically enough, both the defence and the (earlier) rejection of blank voting were justified as a logical consequence of compulsory voting.

³² Papadimitriou 1981b, p. 110-111

³³ Sotirelis 1988, pp. 14-16

³⁴ Ibid, p. 17

³⁵ Svolos 1928, p. 275

³⁶ N.M.Rotis, «Σχόλια στην ΣΕ 3705/87 για τα λευκά ψηφοδέλτια» [Comments to CS 3705/87 on the blank ballots], *To Syntagma* 1988, pp. 318-319

³⁷ G.Sotirelis (1988), *Το δικαίωμα της λευκής ψήφου [The right of the blank vote]*, Athens: Sakkoula, pp. 24-26.

Yet, some jurists disputed the pedagogical value of compulsory voting, which was otherwise widely praised for contributing to the democratic education of the people.³⁸ According to Koutsoubinas, in contemporary society, the mass media affected the formation of political preferences on an everyday basis and thus diminished any pedagogical value that showing up at the polls every four years could have:

*“After all, the real objective of elections, i.e. to materialize the sovereignty of the people, is not any more the formal participation of most people in the electoral process, but the transformation of the will –shaped through everyday democratic dialogue– of the conscious and responsible citizens into the will of the state, the will of the electorate.”*³⁹

Thus, democratic education was becoming more complex and did not relate merely to the practice of elections. Democracy was in fact not only a matter of electoral procedures, but a question of good citizenship and responsible behaviour reflected in all areas of life.

Are blank votes valid? The 2004 Paschalides affair

Furthermore, Greek jurists were concerned about the technical validity of the blank vote. For example, Papadimitriou disputed the claim that electoral legislation ranked blank and spoiled ballots as equivalent. Blank ballots were not taken into account, for example, when calculating the electoral threshold or the need for a run-off, as if they were cast by mistake. In reality, he said,

“The blank ballot differs radically from the spoiled and should therefore be considered by the legislation as valid with all legitimate consequences. The blank

³⁸ A. Manesis, *The guarantees for observing the Constitution*, vol.2, Thessaloniki-Athens 1961-1965, p. 245

³⁹ S. Koutsoubinas, «Το πρόβλημα των λευκών ψηφοδελτίων (ΣΕ 3709/87)» [The problem of blank ballots (CS 3705/87)], *To Syntagma* 1988, p. 312, n. 19

*ballot indeed registers a conscious political choice, whereas the spoiled one deprives from the expression of the voter's will its legal effects because of the unintentional or intentional flaws that occur during the (vote) count”.*⁴⁰

The kind of thinking that preceded the casting of a blank ballot was much more complex and sophisticated, he thought, than what happened when someone chose to spoil her or his vote. Classifying these two as equivalent acts undermined both the conscience and political will of the elector. On the contrary, blank votes should be considered valid, just as the ‘expressed votes’, i.e. those indicating a choice of candidate. The same could also be deduced from the principle of equal votes, which meant that all legally-expressed voices must have, in principle, the same value.⁴¹

Hence, as a matter of principle, the difference between a blank and a spoiled ballot must be reflected in the electoral system. However, in practice, the consideration of blank votes as valid and their inclusion in the electoral threshold or distribution quota caused serious difficulties. For example, with an excessive number of blank votes, the threshold could rise too much and distort or choke the system.⁴² Moreover, it was impossible to find a workable solution for distributing seats that corresponded to blank votes in a proportional electoral system.⁴³ Besides, counting blank ballots as valid would raise the electoral threshold and put small parties at a clear disadvantage. The best solution, it was suggested, would be to consider blank ballots as valid, but refrain from counting them into the quotas.

Despite this juridical and political consensus on excluding blank votes from the distribution of seats, the lack of an explicit law and underhanded party tactics caused a small political thriller in 2004-2008. In the middle of a dispute in May 2005 following the 2004 national elections, the Special Supreme Court issued a controversial decision that blank votes should be counted in the determination of

⁴⁰ Papadimitriou 1981, p. 209

⁴¹ Ibid, p. 27

⁴² For example, in run-offs between two candidate mayors, where 50% of the vote is needed, it could prevent the nomination of a winner. Koutsoubinas 1988, p. 312

⁴³ Sotirelis, pp. 27-28

voting results.⁴⁴ This new rule had a significant impact on the calculation of electoral thresholds. The immediate effect was a change in seat distribution in three constituencies, suspiciously benefitting the PM's late uncle Achilles Karamanlis (New Democracy). This decision was heavily criticised by the opposition, not only because it overturned all previous rulings, but especially because it was contradictory with the the rules for all other constituencies, since the decision to count blank ballots was to apply only to the plaintiffs' electoral district. Irregularities in the appointment of the judges for the case were also noted and condemned. The opposition expressed their indignation by terming the act the '*blank coup d'état*'.⁴⁵

The judges of the Special Supreme Court were divided on this case. A thin majority (6 of 11) ruled that blank ballots should be counted as valid, due to the principles of equal treatment of votes and the free expression of popular will. The opposite view, namely the invalidation of blank votes, would skew the political choice of voters and exclude them from participating in political life in their own way.⁴⁶ The dissenting minority of 5 judges protested that the Court failed to take into account the effect of counting blank votes in a particular electoral system (notably, the Greek system of reinforced proportionality).⁴⁷ It would not affect the electoral result equally for large or small parties — and notably harm the latter. Thus, it contradicted the principle of proportionality. Besides, the negative character of blank votes did not warrant the assumption that the political will of blank voters was reflected when blank votes were calculated as valid votes. Since blank voting was the 'negative' act of rejecting all candidates, a type of deliberate self-exclusion, the intention behind it was more evidently not to be integrated in the determination of results.

⁴⁴ Special Supreme Court, Decision 12/2005 (09 May 2005)

⁴⁵ «Λευκό πραξικόπημα», "George accusing, Achilles reacting", *Eleftherotypia*, 12.05.2005; See also Question of MP G.Paschalides to the Prime Minister, n.644/12/8 Feb. 2005, Session PIB', Hellenic Parliament, 11 Feb. 2005, pp. 5465-5466; MP Skandalidis on the draft Electoral Law, Session ΞΘ', Hellenic Parliament, 24 Jan. 2006, p. 3539; a more humoristic nickname for the case was 'The uncle's comeback' by MP E.Othonas, Session ΞΘ', Hellenic Parliament, 24 Jan. 2006, p. 3568; a lot of juridical and press material is also available at <http://www.paschalg.gr/content-category/1/> (last accessed 23 Apr. 2011)

⁴⁶ SSC Decision, p. 8

⁴⁷ *Ibid*, pp. 9-10

While MP George Paschalides (PASOK), who lost his seat following the Court decision, brought the case to the *European Court of Human Rights* (ECHR), the government submitted a bill restoring the old rule on the invalidity of blank votes.⁴⁸ Thus, they overturned the Court's decision, thereby handing over the contested seat to the opposition and putting an end to accusations of election manipulation. Only MP Stefanos Manos, a prominent Liberal who had been guest-elected on a PASOK ticket, defended the 'validation' of blank votes in principle. It was the sole way, he argued, to safeguard the citizens' freedom of political choice.⁴⁹ The need to provide for the validity of the political expression of blank voters was highlighted also by MP Christos Verelis (PASOK).⁵⁰

Otherwise, the discussants of the 2006 bill repeated the previous argumentation of the Court. They argued that the 'validation' of blank ballots under the current electoral system harms small parties,⁵¹ may block the run-off election of mayors,⁵² distorts the will of the citizens who casted positive votes⁵³ and degrades the representativeness of the Greek polity.⁵⁴ According to constitutional expert and MP Evangelos Venizelos, counting blank ballots goes against the will of those who cast them, which is essentially a will to criticise the party system and to underscore the need for alternative political proposals.⁵⁵ In the end, the technical agreement reached was that blank votes would not be calculated, because of their effect on the electoral outcome. However, no consensus was reached as to their juridical and political nature. The ECHR decision was made in 2008 and vindicated Paschalidis' right to reclaim his lost

⁴⁸ Election Law Amendment 3434/2006, art.1; Hellenic Parliament, *Statement "Regulation of matters related to national, regional and municipal elections and settlement of special issues"*, 29 Nov. 2005 www.ita.org.gr/library/Downloads/docs/Αιτιολογική%20Εκθεση.pdf

⁴⁹ MP S.Manos (Independent-PASOK), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3547; See also MP S.Manos, Session ΟΑ', Hellenic Parliament, 26 Jan. 2006, p. 3629; G.Stefanakis, "The value of the blank ballot, *Eleftherotypia*, 10 Oct. 2005

⁵⁰ MP C.Verelis, Session Ο', Hellenic Parliament, 25 Jan. 2006, p. 3584

⁵¹ MP F.Kouvelis (Synaspismos/Coalition of the Left of Movements and Ecology), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3543; MP A.Skylakos (KKE/Communist Party of Greece), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3559

⁵² MP A.Papadopoulos (PASOK), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3563

⁵³ MP A.Korka-Konsta (New Democracy), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3550

⁵⁴ MP A.Dermentzopoulos (New Democracy), Session ΞΟ', Hellenic Parliament, 24 Jan. 2006, p. 3567

⁵⁵ MP E.Venizelos (PASOK), Session ΟΑ', Hellenic Parliament, 26 Jan. 2006, p. 3631

seat; however, it based its ruling on irregularities specific to the case and left the question of blank ballots to the margins, to be decided by national legislatures.⁵⁶

Blank ballots: Concluding note

According to a 2006 research note of the Hellenic Parliament, the blank ballot is counted as invalid in most European countries.⁵⁷ In Italy since 1957 and France already since 1852, laws acknowledge that, while blank votes carry a special status, they are excluded from the calculation of electoral thresholds and quotas. This situation has not remained unchallenged, however, as the existence and activity of the French *Association pour la reconnaissance du vote blanc* demonstrates.⁵⁸ On the other hand, in Germany and the UK there is no provision at all for providing blank ballots to voters, because voting is not compulsory in these two countries and voters can express their negative voice by abstaining from the polls.

Precisely this observation leads to the recognition that, in countries with compulsory voting, blank votes must have a different status. It is not by accident that the number of blank and spoilt votes together is usually higher in these countries. In Belgium, blank votes are indeed recognised as legally valid, but bear no political weight when it comes to the allocation of parliamentary seats. Consequently, they produce a substantial inequality between blank and non-blank voters, similar to the effective inequality between abstainers and voters in voluntary-voting systems.⁵⁹ One could therefore argue that, if blank voting has the same content and effect as abstention, it makes no sense to allow the former and prohibit the latter. From this point of view, the blank ballot option renders compulsory voting devoid of meaning. The actual

⁵⁶ CoE Decision, *Affaire Paschalidis v. Grèce*, [10/04/2008 / 10 Apr. 2008 ?] <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=831071&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

⁵⁷ Hellenic Parliament, *Report on the bill "Regulation of matters related to national, regional and municipal elections and settlement of special issues"*, 23 Jan. 2006, pp. 3-4

⁵⁸ O.Durande (1999), *Le vote blanc. Pour un suffrage vraiment universel*, Paris : L'Harmattan ; A.Zulfikarpasic (2001), « Le vote blanc : abstention civique ou expression politique ? », *Revue française de science politique*, vol.51, no.1, pp. 247-268

⁵⁹ J.Ackaert et al, "L'abstentionnisme électoral et le vote blanc et nul en Belgique", *Res Publica* 34 (1992), pp. 209-226

value of compulsory attendance in elections must thus be renegotiated, as has been happening in Belgium over the past thirty years.

B. Abolition discussions in Belgium and the Netherlands

The political and scholarly debate that was launched in the 1980s in Belgium approached the question from many different angles. The first parliamentary debates referred to the values and the effects of obligatory voting. A number of studies that appeared in the 1990s explored the political⁶⁰ and juridical⁶¹ implications of a potential abolition. On the other hand, the latest research on obligatory voting in Belgium has mostly been in the field of political sociology and voter behaviour.⁶² Only after the mid-2000s did the debate enter the field of political theory, where there have been efforts to pin down some of its philosophical nuances.⁶³ Regardless of this methodological variety, all of the approaches are part of a single national discourse where, apart of the distinct institutional, political and intellectual context, they are interdependently bound to each other.

⁶⁰ L.Vanmaercke, «Obligation ou droit de vote», *La revue politique* 2, 1993; J.B.Pilet, "Choosing Compulsory Voting in Belgium: Strategy and Ideas Combined", *Paper for the ECPR Joint Sessions Workshop 'Compulsory Voting: Principles and Practice'*, 7-12 May 2007, Helsinki, Finland.

⁶¹ M.Kaiser, «Les enjeux et les perspectives du vote obligatoire», *Revue Belge du Droit Constitutionnel* 3, 1998; P.Levert, «Le vote obligatoire», in *Les élections dans tous leurs états*, Actes du colloque organisé par le Centre de droit public de l'Université libre de Bruxelles, Bruxelles 2001

⁶² M.Stuer, *Niet-verplicht stemrecht in België : een onderzoek naar de invloed van sociografische factoren op de opkomst bij verkiezingen* (Licentiate Dissertation), Katholieke Unversiteit Leuven, Faculty of Social Sciences, Department of Political Science, 1991; B.Vanheste, *Niet verplicht stemrecht in België : onderzoek naar invloed van maatschappelijke factoren op stemgedrag*, (Licentiate Dissertation), Katholieke Unversiteit Leuven, Faculty of Social Sciences, Department of Political Science, 1991; M.Hooghe-K.Pelleriaux, "Compulsory voting in Belgium: an application of the Lijphart Thesis." *Electoral studies* 17(4), 1998, pp. 491-424, L.De Winter, "Compulsory voting in Belgium: A reply to Hooghe and Pelleriaux", *Electoral Studies* 17, 1998, pp. 425-428, K.De Ceuninck et al., "Le Vote Obligatoire en Flandre : Une Analyse à l'Échelle Locale", *Les Cahiers du CEVIPOL*, 2006/1, E.Quintelier, M.Hooghe, S.Marien, "The effect of compulsory voting on turnout inequality", *Paper for the Annual Meeting of the American Political Science Association*, 28-31 August 2008, Boston, USA

⁶³ B.Engelen, "Why Compulsory Voting Can Enhance Democracy?", *Acta Politica* 42, 2007, pp. 23-39; J.Lacroix, "Du Suffrage Universel à la Participation Universelle: Pour Une Obligation Libérale de se Rendre aux Urnes", *Raison Publique* 8, 2008, pp. 95-111; B.Engelen, "Why Liberals Can Favour Compulsory Attendance", *Politics* 29(3), 2009, pp. 218-222 ; for a detailed analysis, see the next chapter

These latest debates are all the more interesting because, since the introduction of compulsory voting in Belgium in 1893, the institution has gone unchallenged for almost a century. It had been discussed only rarely and re-introduced in connection with women's suffrage in 1948. Thereafter, a series of other electoral reforms took place. For example, after the 1968 student movement, the voting age was lowered to 18 years for communal (1969) and general elections (1981). The democratisation of suffrage continued by laying out provisions for EU citizens' participation in EU (1994) and communal elections (2000) and, eventually, by extending the communes' electorate to include third-country citizens in 2006. Participation in all of these elections became obligatory for everybody, although registration in electoral rolls is optional for non-Belgian citizens. Perhaps this is another sign of the tendencies to abolish compulsory voting that were generated in the 1980s, as an effect of the abolition of compulsory voting laws in the neighbouring Netherlands.⁶⁴

The Dutch debate became the main point of reference when the topic started to return, at first hesitantly then much more forcefully, to the Belgian political agenda in recent years. The report of the Berger Commission, which led up to the law of 4 March 1970 that abolished compulsory voting in the Netherlands, made four central points against the use of a legal enforcement:⁶⁵

- (i) Compulsory voting is an anachronistic institution: it was introduced in a time when the willingness of voters to participate in elections was in doubt. Over the twentieth century, society has advanced and the people have reached the maturity to consciously appreciate the importance of elections. Hence, the conditions that originally justified compulsory voting have been eclipsed.
- (ii) Sanctions could only be (and were) partially applied, thus harming the image of law-enforcing authorities.
- (iii) It is important for democracy that the results of elections reflect the political choice of those citizens who take voting seriously and are aware of their duty to vote. The obligation to vote only produces pathetic citizenship and negative votes.

⁶⁴ It had been introduced there in 1917. Other European countries that had some form of compulsory voting and abolished it are Italy (1993) and Austria (progressively from 1982 to 2004).

⁶⁵ *Rapport van de adviescommissie opkomstplicht*, n.09441/1, 15 November 1967

- (iv) A variable rate of electoral participation is beneficial for the vitality of democracy, insofar as the low levels of participation indicate a failure of parties to address public concerns in a clear and timely manner.

The first abolitionist bill in Belgium: *Flemish Liberals (1985)*

In the 1980s, the reasoning used in the Dutch debate to abolish compulsory voting echoed loudly in the Belgian Parliament. Despite evidence that the abolition had produced a less inclusive representative structure in the neighbouring country,⁶⁶ some political forces in Belgium started arguing for a similar reform. The new regionalist parties, People's Union / *Volksunie* (VU) and the Walloon Rally / *Rassemblement wallon* (RW), were the first to suggest following the Dutch example. Abolition of compulsory voting was part of their programmatic demands for direct political participation, including referendums and the election of municipal authorities.⁶⁷ The Green parties *Ecolo* and *Agalev* then followed suit.

The first proposition to revise Article 48, paragraph 3 of the Constitution was submitted to the Federal Assembly by the Flemish liberal *Party for Freedom and Progress* (PVV). Its floor leader Ward Beysen and the party leader Guy Verhofstadt were amongst the signatories. The latter would soon become by far the most outspoken abolitionist figure in Belgium. The abolition of compulsory voting was part of his ideological renaissance of the Flemish Liberals into a more individualistic and libertarian party, which was reflected in Verhofstadt's new motto '*Burgerdemocratie*' (Democracy of the Citizen).⁶⁸

The Dutch origins and ideological load of the abolitionist trend were apparent in the first bill by the PVV proposing the abolition of compulsory voting in 1985.⁶⁹ Like the

⁶⁶ I.Galen, "Compulsory Voting Legislation: Impact on Voter Turnout in the Netherlands", *Comparative Political Studies* 7, 1974, pp. 292-314

⁶⁷ Pilet 2007, p. 6, K.DeCeuninck et al, "Le vote obligatoire en Flandre. Une analyse à l'échelle locale", *Cahiers du Cevipol*, n°1, 2006.

⁶⁸ *Ibid.*

⁶⁹ Doc. Parl. Séssion 1984-1985, n.1215/1, Chambre des Représentants, 22 May 1985 (Beysen et al)

Dutch abolitionists, the Flemish Liberals spoke about the now obsolete circumstances that motivated the introduction of compulsory voting in 1893: abstention was high at the time because polling stations were set up in the centre of the districts (*arrondissement*), i.e. the sub-prefectures, rather than the parishes. In addition, voters in the past had no political education. In general, the concept of voting was at that time perceived differently, as a collective duty, rather than as an individual right. Indeed, the parliamentary proposal drew especially upon the Rousseauvian theory of electoral right (versus duty) as the basis of popular sovereignty. In addition, all the points raised in the Dutch abolition bill were re-enacted, but with milder, ‘symbolic’ sanctions and many exemptions, similar to the system used in Italy. This proposal did not bring institutional changes, yet it signalled the beginning of a *grand* political discourse on the issue.

The position of the Belgian parties

By the early 1990s, all Belgian parties had adopted a clear position on the matter. Christian Democrats and Socialists, both in Flanders and Wallonia, were in favour of maintaining compulsory voting.⁷⁰ *Ecolo*, previously an abolitionist party, later decided to join the anti-abolitionist camp. A pamphlet promoting federalism stressed that abolition of compulsory voting was in fact unnecessary and senseless, because it would send the wrong message to voters.⁷¹ In this way, abolition was disconnected from the federalist cause and further complicated the position of the Belgian parties.

But the consensus was not easy to maintain, with dissenting voices being raised inside most parties.⁷² For example, two MPs from the Christian Democrats (CVP) co-signed a VLD bill for the abolition of compulsory voting and over one-fourth of Flemish Socialist delegates (SP) voted against it during a national conference in 1993. Even within the VLD, some members, like its old leader Willy de Clercq, were in favour of compulsory voting, which led to a serious debate on the issue in a party conference in

⁷⁰ J.Grobbe, “De Kiezer is Ontstemd”, *Knack*, 3 Sept. 1997]

⁷¹ Groupe Coudenberg, *Au nom de la démocratie*, Bruxelles 1991, pp. 82-83

⁷² Pilet 2007, p. 7

1993. But the most characteristic example was that of the Francophone Liberals (PRL, now MR), who were divided on the issue for some time. In their campaign manifesto in 1995, they avoided adopting a clear position, stating that the debate must remain open. At the end, their leader Louis Michel asserted that the party was not in favour of abolishing compulsory voting.⁷³ On the other hand, some of the central figures in *Spirit* also joined the abolitionist camp.

In addition, abolition was endorsed by the nationalist *Vlaams Bloc* (VB). The Flemish far right indeed submitted a bill to the parliament in 1994 asking to remove the principle of compulsory voting.⁷⁴ The main reason was the large influence of party hierarchies on electoral results, which were effectively subverting voters' choices. In fact, it was thought that non-obligatory voting would create more 'authentic' votes and a more reliable barometer for measuring the real level of interest in politics.⁷⁵ At the same time, the allegations that the party's shares would suffer from the abolition was dismissed as too hypothetical and unreliable; the question had to be debated instead on ethical grounds.⁷⁶

VLD's struggle against compulsory voting since the mid-1990s

In the meantime, the PVV, led by Verhofstadt and renamed the *VLD* (Flemish Liberals and Democrats), commenced a systematic struggle in favour of abolishing the constitutional clause. Along with the Flemish nationalist party *Volkspartij*,⁷⁷ it submitted new bills in 1995.⁷⁸ As all efforts to reform the constitutional provision failed, and the VLD engaged in a race for abolishing the clause from the electoral

⁷³ L. Michel, "Droit de vote: pas de liberté sans devoir", *Le Soir*, 29 Aug. 1997 ; however, the party remains divided on the issue until today, see « Le vote obligatoire divise le MR », *La Libre Belgique*, 20 Feb. 2010 <http://www.lalibre.be/actu/belgique/article/564008/le-vote-obligatoire-divise-le-mr.html>

⁷⁴ Doc. Parl. Séssion 1993-1994, n.1332/1, Chambre des Représentants, 28 Feb. 1994 (Dewinter)

⁷⁵ Vanmaercke 1993, p. 69, 71-72

⁷⁶ This was a counter-argument to a study of opinion polls published at the time, showing that abolishing compulsory voting in Belgium would mostly harm Vlaams Blok. Stuer 1991, p. 91; Vanmaercke 1993, p. 69

⁷⁷ Doc. Parl. Séssion 1994-1995, n.1756, Chambre des Représentants, 15 Mar. 1995 (Sauwens et al), p.

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⁷⁸ Doc. Parl. Séssion 1994-1995, n.1768, Chambre des Représentants, 23 Mar. 1995 (Dewael et al), p.

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legislation. It turned its efforts to the Senate in 1997, calling for the abolition of compulsory voting in regional, provincial and communal — but not legislative — elections.⁷⁹ Two more bills were submitted in 1999, to the Chamber of Representatives⁸⁰ and to the Senate,⁸¹ each trying to circumvent the constitutional process by directly reforming the ordinary law.⁸²

Paradoxically, the Flemish Liberals deliberately excluded from the 1999 bill the regional elections of Brussels and the German-speaking community. In other words, the abolition would only apply in Flanders and Wallonia. This was a tactical effort to escape the risk of a weaker Flemish representation in the rich capital of Brussels.⁸³ Flemish voters were already a minority in that area; thus, if all of them did not show up at the polls, their numbers in the regional representation bodies would be seriously reduced.

Like in every electoral reform, tactical calculation of party spoils has played a significant role here, too.⁸⁴ For example, the Socialists and the Christian Democrats are allegedly benefitting from compulsory voting, as this allows them to draw on their traditional support base and fixed clientele. These parties also tend to do well among sections of the electorate with traditionally low voter turnouts, and so the abolition would harm their performance.⁸⁵ Conversely, the *Volksunie* and Green parties, which have a weak local apparatus but great voluntary voter mobilisation, would appear to benefit the most from a potential abolition, because their electorate would be more motivated to attend the polls under a voluntary voting system.⁸⁶ The impact of a

⁷⁹ Doc. Parl. Séssion 1996-1997, n.1-598/1 and 1-599/1, Sénat, 27 Mar. 1997 (Verhofstadt et al; Coveliers et al). Legislative elections were excluded from the bill, because to abolish compulsory voting there, a constitutional change was needed.

⁸⁰ The bill was co-signed by Flemish Liberals (VLD), *Volksunie* (VU) and two dissident Flemish Christian Democrats (CVP). Doc. Parl. Séssion 1996-1997, n.1009/1, Chambre des Représentants, 25 Apr. 1997 (Bourgeois et al)

⁸¹ Doc. Parl. Séssion 1999-2000, n.2-191/1, Sénat, 24 Nov. 1999 (Van Quickenborne)

⁸² Kaiser 1998, pp. 256-261

⁸³ *Ibid*; Levert 2001, p. 117

⁸⁴ In Australia, it has been consistently argued that Labor benefits from compulsory voting, while the Liberal-National coalition loses, see I.McAllister, "Compulsory Voting, Turnout and Party Advantage in Australia", *Politics* 21/1 (1986), pp. 89-93; M.Mackerras-I.McAllister, "Compulsory voting, party stability and electoral advantage in Australia", *Electoral Studies* 18 (1999), pp. 217-233

⁸⁵ Jaensch, cited in Massicotte et al 2004, p. 34

⁸⁶ Pilet 2007, pp. 11-12

potential change on the far right is a bit more complicated and has become itself an issue of political and scientific debate, as we shall see next.

In any case, the new bills submitted in the mid-1990s were not ambiguous only in terms of their juridical status and electoral biases, they were also criticised for bad political timing. In 1996 and 1999, Belgian society was seriously shaken by the Dutroux affair⁸⁷ and the dioxin controversy, which precipitated a general distrust against political and administrative authorities. As a result, there was an urgent need for rehabilitating confidence in public institutions, which meant adopting or at least maintaining policies of civic inclusion (e.g. compulsory voting) rather than the opposite.

Abolitionist arguments: Fear of the far-right *Flemish Block*

In 1999, Guy Verhofstadt became Prime Minister of Belgium and new efforts to abolish compulsory voting were launched.⁸⁸ Some of the latest bills were submitted in 2004 by members of VLD and VU in the Chamber and Senate, respectively, and in 2010 in the Senate (Open VLD, Vlaams Belang, List Dedecker).⁸⁹ Abolition in all of these attempts was promoted as the vehicle for a ‘new political culture’ that would modernise and democratise the political institutions.

In particular, the rhetoric in 1995 put particular emphasis on the negative effects of compulsory voting on electoral results. So, the *Volksunie* argued that voters cast their ballots for outlandish or extremist parties as a reaction towards being pressured to vote rather than out of ideological conviction.⁹⁰ VLD also warned that voting obligation was driving citizens and politicians apart by causing popular disaffection

⁸⁷ For the extent of socio-political turmoil that caused reflection on civic values, see Delperée “Le métier du citoyen”, in Y. Cartuyvels et al (eds.), *L’affaire Dutroux: La Belgique malade de son système*, Brussels 1997. See also Doc. Parl. Séssion extr. 1999, n.20/1, Chambre des Représentants, 14 July 1999 (Déclaration du Gouvernement fédéral), p. 2

⁸⁸ Doc. Parl. Séssion 1998-1999, n.2150/3, Chambre des Représentants, 27 Apr. 1999 (Rapport), p. 35

⁸⁹ « Vote obligatoire : proposition visant à supprimer les sanctions rejetée au Sénat », *La Dernière Heure*, 1 Apr. 2010

⁹⁰ Sauwens bill 1995, see above n.76

among the former and indifference towards the electorate in the latter. “*Le résultat des élections doit en effet refléter fidèlement le choix politique des électeurs, qui émettent leur vote de manière motivée, délibérée et réfléchie.*”⁹¹ There was a need for more authentic and better-considered votes in order to offset the rise of votes that were cast without due consideration due mainly to the obligation to vote.

These arguments were obviously influenced by the steep rise of the far right *Flemish Block* after 1990. According to the bills, compulsory voting was to blame for the increase in the share of the *Vlaams Blok* from 1.9% in 1987 to 12% (as *Vlaams Belang*) in 2007. The party was thought to have attracted its votes from disaffected citizens who are reacting to the voting obligation by voting rashly or casting protest votes. These assumptions were supported by a few opinion polls indicating that abolishing compulsory voting would harm above all the Flemish nationalists.⁹² According to the study, their supporters would be the least eager to show up at the polls if they did not have to vote. Nevertheless, the shifts in party gains as a result of abolition are now considered to be only marginal. However, other studies have come out that have concluded the exact opposite, hence the predictions are considered as unreliable.⁹³ There is no valid indication that the extreme right will actually lose if voting is made optional. The *Vlaams Blok* itself has dismissed the conclusions of these opinion polls by itself supporting the abolition of compulsory voting.⁹⁴

On the other hand, the abolitionist rhetoric in 2004 is more focused on the positive results of voluntary voting. This is praised for, among other things, encouraging party and candidate competition and fostering a political culture of vibrant debate and deliberation. In fact, “*les élus devront mériter leurs voix*”,⁹⁵ i.e. candidates have to compete in mobilising voters and ‘earn’ their support. In addition, fluctuating voluntary voter participation at the polls is seen as the best way to measure the legitimacy of parliamentary policies, or their rejection or approval by the voter base.

⁹¹ Dewael bill 1995, see above n.75

⁹² M.Hooghe-K.Pelleriaux, “Afschaffing van de kiesplicht. Een simulatie”, *Samenleving en Politiek* 4, 1997, pp. 8-14 ; DeCeuninck et al, pp. 14-17

⁹³ Pilet 2007, pp. 10-12

⁹⁴ See above n.73

⁹⁵ Doc. Parl. Séssion 2003-2004, n.1216/001, Chambre des Représentants, 16 Jun. 2004 (Vautmans et al) ; Doc. Parl. Séssion 2003-2004, n.3-825/1, Sénat, 16 Jul. 2004 (Germeaux et al)

Hence, in an electoral manifesto from 1981, *Ecolo* declared “[*compulsory voting*] gives the impression to traditional parties that they can rely upon the solid support of their supporters and that they do not need to put much effort to be active”.⁹⁶ Guy Vehofstadt agreed “*politicians have the impression that the Nation supports them, but they throw sand into their own eyes*”.⁹⁷ In other words, compulsory voting made it at times impossible to measure the real strength of political parties.

In addition, the VLD challenged the issue of sanctions. They argued that the system of punishment had fallen into a de facto state of disuse: “*a citizen who does not fulfil his duty by voting is almost certain not to be sanctioned*”.⁹⁸ The whole system was not reasonable, they argued, and that was why it was used by hardly any other European country.⁹⁹

The Lijphart thesis on turnout bias

In the meantime, the Chamber of Representatives commissioned a scientific study on the socio-political and juridical aspects of obligatory voting.¹⁰⁰ As is the case in most recent studies in favour of compulsory voting, the main argument concerned the sociological ramifications of voluntary participation. The study draws extensively on Arend Lijphart’s thesis that voluntary voting reproduces social inequalities in the field of political participation. These inequalities would emerge in Belgium too, should the punishment for abstention be removed. The electorate would become more elitist, since socio-economic factors, such as educational level, professional status, as well as gender, associational activity and even linguistic and political group affiliation, would determine who abstains and who does not. Disadvantaged categories of citizens

⁹⁶ Cited in Pilet 2007, p. 9

⁹⁷ Ibid.

⁹⁸ Vautmans bill 2004; see above n.90

⁹⁹ Beysen Report 1985, p. 2

¹⁰⁰ *Le Renouveau Politique : Démocratie Représentative*, Doc. parl. n.1421/001, Chambre des Représentants, n. 2-506/1, Sénat, 25 Sep. 2001, pp. 58-97

would participate considerably less, while wealthy, older, more educated citizens, for example, would be overrepresented at the polls.¹⁰¹

In this sense, compulsory voting prevents ‘socially inherited’ structural inequalities from being reflected in electoral turnout.¹⁰² These views have been expressed by politicians who were supporting compulsory voting already in the 1990s. In a 1995 electoral manifesto, the Flemish Socialists declared: “*Compulsory voting guarantees that the parliament is not like a company where a small minority of rich stockholders have the power because most small stockholders are absent*”.¹⁰³ Hence, “[it] ensures that each and every one is included within the democratic system. It avoids that some are left aside and that the less-educated, the weakest ones are on the political agenda”.¹⁰⁴ The Christian Democrats, in the words of Herman Van Rompuy (CVP), also echoed these concerns: “*We must realise that the first ones who will not exercise their right to vote are the weakest citizens*”.¹⁰⁵

However, there is little evidence that the social bias of turnout in countries where voting is voluntary is actually conducive to policies that benefit one social group over another. Conversely, it is not possible to know whether the abolition of compulsory voting in Belgium would produce less popular policies in general, or weaker social policies in particular.¹⁰⁶ In addition, these sociological studies provide no comprehensive scheme for preventing possible electoral manipulation of the groups

¹⁰¹ There are several studies documenting how the suppression of obligatory voting in Belgium would lead to unequal representation of the Belgian population, e.g. Hooghe-Pellieriaux 1998, Hooghe-Marien 2008. In a recent study however, the proposition that compulsory voting alone can produce equal turnout has been challenged, especially due to the inapplicability of sanctions, and different policies to motivate young people who abstain frequently have been recommended; see Quintelier et al 2008; L.DeWinter, P.Dumont, J.Ackaert “La participation électorale réelle et potentielle : des vertus du vote obligatoire” in A-P.Frognier, A-M. Aish, *Élections, la rupture ? Le comportement des Belges face aux élections de 1999*, Bruxelles 2003, pp. 54-69 ; L.DeWinter, J.Ackaert, “Abstentionnisme électoral et vote blanc ou nul: le ‘vote-nul’ en Wallonie” in A-P.Frognier, A-M. Aish, *Élections la fêlure? Enquête sur le comportement électoral des Wallons et de Francophones*, Bruxelles : De Boeck 1994, pp. 77-97. Another study tries to flesh out the conditions that would lead voters to the polls if obligation was abolished, N.Schiffino, A-M.Aish, “Et si le vote n’était plus obligatoire?” in A-P.Frognier, A-M. Aish, *Des élections en trompe-l œil. Enquête sur le comportement électoral des Wallons et de Francophones*, Bruxelles : De Boeck 1999, pp. 97-120

¹⁰² *Le Renouveau Politique*, pp. 66-67

¹⁰³ Cited in Pilet 2007, p. 9

¹⁰⁴ *Ibid.* p. 10

¹⁰⁵ *Ibid.*

¹⁰⁶ *Le Renouveau Politique*, p. 65, 82

that would be more exposed to political clientelism.¹⁰⁷ Because of the lack of consensus among the sociological studies and the ambiguity of the evidence, studies have not as of yet offered a conclusive contribution to resolving the political controversy over the issue.

In the latter half of the first decade of the 2000s, Belgian scholars have attempted to justify compulsory voting from a normative point of view.¹⁰⁸ Generally outlined, their arguments are that such a system guarantees political participation, civic inclusion, equality and democracy.¹⁰⁹ Institutional guarantees, such as the secrecy of the vote, the blank option and moderation in punitive sanctions and enforcement all ensure that the individual's political autonomy is not violated.¹¹⁰ In any case, whether or not it violates individual liberty depends on what concept of liberty one adopts.¹¹¹ Lastly, the accusation that the measure is obsolete has been countered by showing that politicians have used similar arguments both for and against compulsory voting since at least 1893 until the present day.¹¹² As a result, among the Belgian scientific community, the case for compulsory voting appears stronger than the abolitionist efforts.

Timing and politics of compulsory voting today

In the late 1990s, declining voter participation sparked extensive discussions on the deficiencies of the electoral system, and there was a renewed interest in mandatory voting in many countries. For example, in Britain, after the low 1997 turnouts, the 'genuine representation', 'public awareness' and 'renewal of the democratic process' that compulsory voting might induce was discussed in the Home Affairs Select Committee, where the Conservative Party and Liberal Democrats expressed their

¹⁰⁷ I owe this point to Kari Palonen.

¹⁰⁸ These will be discussed in more detail in the next chapter.

¹⁰⁹ Engelen 2007, pp. 23-39

¹¹⁰ Engelen 2009, pp. 218-222

¹¹¹ Lacroix 2008, especially p.104. See also J.Lacroix, "A Liberal Defence of Compulsory Voting", *Politics* 27 (3), 2007, pp. 190-195

¹¹² Pilet 2007

opposition for reasons of principle and of practice.¹¹³ Thereafter, compulsory turnout was advocated by two think tanks associated with the Labour Party: the Fabian Society¹¹⁴ and the IPPR.¹¹⁵ These were coupled with parliamentary developments, including a private member's bill in 2001 and an adjournment debate in 2004,¹¹⁶ an open endorsement by the Leader of the House of Commons, Geoff Hoon,¹¹⁷ and a research report by the Electoral Commission.¹¹⁸ To date, however, electoral reform discussions in the UK have focused on demands for more proportionality, for example through the Alternative Vote.¹¹⁹

Similar events have taken place in Canada. In 2004, the Act to make Voting Mandatory was submitted in the Canadian Senate by Liberal Senator Harb. The rationale was to counter “*a rising electoral crisis*” in the country, after a record low 60.9% in the 2004 federal elections — followed by an even lower turnout in 2008 — which was read as ‘harmful for democracy and government legitimacy’.¹²⁰ A fine of C\$50 was proposed for those who abstained in spite of their opportunity to vote for “none of the above” or to write in the ballot the name of an individual they would like to nominate. Still, those who provided a valid reason for not voting would not be fined. The Harb bill was opposed by Senators defending the voters’ ‘freedom of

¹¹³ The Electoral Commission (12/2006), *Compulsory Voting: Factsheet*, London: The Electoral Commission; C.Sear, P.Strickland (2003), *Standard Note: Compulsory Voting*, SN/PC/954, House of Commons Library

¹¹⁴ T.Watson, M.Tami (2000), *Votes for all: compulsory participation in election*, Discussion Paper, London: Fabian Society; both authors were Labour MPs.

¹¹⁵ E.Keaney, B.Rogers (2006), *A Citizen's Duty: voter inequality and the case for compulsory turnout*, London: Institute for Public Policy Research

¹¹⁶ I.White, R.Young (2007), *Standard Note: Compulsory Voting*, SN/PC/954, London: House of Commons Library

¹¹⁷ “Hoon calls for compulsory voting”, *The Guardian*, 4 July 2005

¹¹⁸ The Electoral Commission (6/2006), *Compulsory voting around the world*, Research Report, London: The Electoral Commission

¹¹⁹ See the referendum on the UK Parliamentary voting system, 5 May 2011.

<http://www.electoralcommission.org.uk/elections/upcoming-elections-and-referendums/uk/referendum>

¹²⁰ J.C.Courtney, D.Wilby (2007), “The Debate about Compulsory Voting”, *Canadian Parliamentary Review*, pp. 42-46; See also L.Young (November 2010), “Forcing Ourselves to Vote”, *The Canadian Literary Review*

choice' and did not make it beyond the second reading. However, a public debate on the issue seems to be still ongoing.¹²¹

Last but not least, support for compulsory voting has been rising of late in France.¹²² Francois Bayrou, the presidential candidate for the centrist party UDF (now MoDem) in 2002 (4.9%) and 2007 (18.6%) has adopted compulsory voting, along with the recognition of blank votes, in his political programme. The aim is to ensure fair, universal and equal representation of citizens in the Parliament, in particular, to prevent domination by small extremist minorities. Bayrou's reform proposal seeks to « *restore democracy in the Republic* ». ¹²³

Besides the presidential race, the idea has also been supported inside Parliament, with four bills submitted between 2000 and 2003, mostly by centrist and centre-left deputies, in the latter case by a very prominent figure within the Socialist Party.¹²⁴ In the meantime, however, the idea has gained considerable ground in the ruling conservative party (UMP), which has submitted two bills in 2008 and 2011, each supported by several of its MPs.¹²⁵ The latest proposal was designed to minimise the votes of the far right, amidst fears that Nicolas Sarkozy's nose-diving reputation may bring the popular *Front National* candidate Marine Le Pen in his place to a run-off vote (against the Socialist candidate) for the 2012 Presidential Elections.¹²⁶ In sum, the pragmatic reasons that have mobilised support for compulsory voting in France

¹²¹ "Mandatory voting pros : more voters means increased electoral legitimacy", *The Globe and Mail*, 25 April 2011 <http://www.theglobeandmail.com/news/national/time-to-lead/mandatory-voting-pros-more-voters-means-increased-electoral-legitimacy/article1997241/>

¹²² *Le vote obligatoire*, Sénat, n.LC 121, May 2001, pp. 1-22

¹²³ *La Revolution Civique*, Discours de François Bayrou, Conseil national de l'UDF-Issy-les-Moulineaux, 10 June 2006 « *remettre de la démocratie dans notre République* »

¹²⁴ Proposition de loi par Rudy Salles (UDF), 30 May 2000, n.2430 ; Proposition de loi par Dominique Paillé (UDF), 18 October 2000, n.2642 ; Proposition de loi par Dominique Paillé (UDF), 30 December 2002 ; Proposition de loi par Laurent Fabius et al (3 PS), 23 January 2003 ; Proposition de loi par Charles Cova (UMP), 5 February 2003

¹²⁵ Proposition de loi par Diefenbacher et al (23 UMP, 1 NC, 1 GDR), 24 April 2008, n.839 ; Proposition de loi par Lazaro et al. (13 UMP), 13 April 2011, n.3367

¹²⁶ « Et si on changeait la façon de voter pour éviter un nouveau 21 avril ? », *Le Post*, 21 April 2011 <http://www.lepost.fr/article/2011/04/21/2473218-et-si-on-changeait-la-facon-de-voter-pour-eviter-un-nouveau-21-avril.html>

over the last 10 years include the decrease in turnouts and the rise of extreme right parties.

Political outcomes

It is often said that the system creates either electoral advantages or electoral disadvantages depending on which side you're on. It was observed already before the Second World War that compulsory voting might “*offer a premium to the socialists at the cost of other parties*”, especially if one was considering the clear constituencies of Democrats in the US at the time.¹²⁷ In Australia, it has also been demonstrated that the punishment of abstention damages rightwing parties (e.g. the Liberal-National Coalition in the 1996 federal election) and advantages leftwing and minor parties. As a result, the idea has been and is supported by socialists in Anglophone countries (Australia, UK, US).

The situation changes in Francophone countries, like France, Belgium, Greece and possibly also Canada,¹²⁸ where the idea is supported by large parties in general, including both socialists and conservatives. On the contrary, smaller parties occupying the extreme margins stand to lose from it and are usually opposed to the idea (e.g. the *Vlaams Belang* in Belgium or the *Communist Party* in Greece). In these cases, political outcomes also depend on a system of stable political client-voters and the question of mobilisation of the voter base, which large parties use obligatory voting for. In general, which parties lend their support to the idea of compulsory voting varies according to what electoral gains are expected from either introducing or abolishing it, as well as according to the political culture of the country.

¹²⁷ H.Tingsten (1937), *Political Behaviour*, Ch.4, cited in Morris-Jones 1954, p. 31. The passive clienteles of large parties, which are easily mobilised by an obligatory system, play also a role today.

¹²⁸ These countries belong to the *International Organisation of the Francophonie*.

Political consequences have indeed been at the forefront of the relevant discussions. It has been assumed that enforced turnout would have a moderating effect, since those who would abstain under a voluntary voting system are thought to hold moderate political opinions. Conversely, those who tend to participate anyway tend to have stronger preferences, which correspond to extreme views.

*“If intensity of preference equates with ideological extremism, and indifference translates into moderation at the polls, the logical conclusion is that mandatory electoral participation is a useful means of stemming extremism and promoting centrist outcomes”.*¹²⁹

Therefore, in Belgium and France, advocates of compulsory voting tend to over-emphasise its positive effect on balancing extreme right-wing votes.

Concluding note

The choice between obligatory or voluntary electoral participation is permeated by a conceptual complexity that has triggered a political controversy in the last years. Electoral advantages have played an important role in parliamentary debates on the abolition or introduction of such a system. In particular, parties took into account the problem of voter mobilisation and their desire to counter rising right-wing extremism.

The constitutional and political question of compulsory voting has been discussed in Belgium and Greece often over the past three decades. In the Belgian case, the Christian Democrats and the Socialists have traditionally supported it. The main reasons for maintaining the principle seem to be the (continuing) idea of voting as a duty, the increased legitimacy it gives to democratic institutions, a desire to maintain

¹²⁹ Birch 2009, p. 52

close ties between representatives and represented, and, above all, to ensure the political inclusion of socio-economically disadvantaged groups, who are the most prone to abstain. In Greece, on the other hand, the central rationale is the symbolic-pedagogical role of the clause as an incentive to civic engagement. As in Belgium, it has been supported by Conservatives and Socialists alike.

However, in both countries, the application of sanctions has waned. This development came in parallel with strong calls for complete abolition of the institution. In Belgium, the Flemish Liberals, nationalists and extreme right have pursued this goal. In Greece, small parties such as the short-lived Liberals (Stefanos Manos) and the Communists are against compulsory voting. But in the 1970s, Centrists and Socialists also attacked the use of sanctions against abstainers, in order to break with the undemocratic past when compulsory voting was used as measure of political discrimination. Arguments against compulsory voting are very rarely heard in Greece today. On the contrary, in the Belgian case, arguments against compulsory voting focus on a variety of issues, such as the freedom to exercise the right to vote, the dubious 'quality' of the votes cast under the fear of sanctions — which may in fact help extremist parties — and the perversion of free political competition.

Another closely related and important question is the blank vote. In countries where voting is compulsory, the blank option has acquired a special meaning. It is the only opt-out for citizens who wish to express their indifference, rejection or protest against all of the parties and/or the political system. Furthermore, voters who choose to cast a blank or spoilt ballot in countries where voting is compulsory tend to occupy the same low socio-economic and educational strata as abstainers do in countries where voting is optional.

Given the legal obligation to attend the polls, it may be useful to grant a special status to blank votes. The idea is to recognise them as a valid expression of political will and redeem them as equal to 'positive' or 'expressive' votes, i.e. votes that express a

preference for a candidate or party. However, not only is it doubtful whether this is in line with the political will of blank voters, but there is no mechanism to integrate blank votes effectively in the electoral results. Thus, the tension between the legal status and the political calculation of the blank vote remains today an unresolved institutional riddle.

The fact that the debate on compulsory voting has caused so much political controversy — not only in the countries that inherited obligatory-voting clauses, but also in those that consider it as a possible new solution against abstention — has attracted the interest of political theorists. The political debate certainly makes use of the fundamental concepts of democratic life. For example, the concept of democratic legitimacy seems to have different associations in the opposed camps: Liberals think of it as resulting from voluntary participation in public affairs, the level of which is a measure of satisfaction with current policies. Socialists would rather see democratic legitimacy as a product of full participation. In the same manner, authentic representation may derive either from the voluntary character of voting, or from the inclusiveness of the electoral system.

These conceptual distinctions are not mere rhetorical tools of parliamentary eloquence, but at the core of the basic ideological differences between the various political actors. The acts of electoral legislation work as a process of selection and elimination, since they determine which politicised views are expelled from the sphere of debate and which will continue to live within the institutions which they have justified. In addition to the political debate, however, the fate of these electoral institutions depends much upon scholars, who have also engaged in recent years in a productive exchange over the justifiability of compulsory versus voluntary voting.

Chapter 8: The post-war academic debate on compulsory voting

The contemporary philosophical debate on compulsory voting is permeated by intellectual trends and political thinking that developed in the second half of the twentieth century. Post-war democratic theory has been dominated by scholars who have undervalued the importance of electoral participation, believing it to ensure only minimum levels of voter engagement (liberal elitism), or regarding elections in themselves as insignificant (direct-democracy/participatory theories) or even harmful for the democratic process (radicals). The trend to abolish compulsory voting, from the post-war era until the 1990s, was co-dependent on this systematic and elaborate criticism of comprehensive electoral participation.

On the other hand, a defence of electoral participation requirements has developed in recent years. In response to the campaign to abolish compulsory voting in Australia and Belgium, republican and egalitarian thinkers from mainly these two countries have argued that there are justifications and a need for effective universal participation.¹³⁰ They have been joined by other scholars searching for electoral system innovations to stop the gradual decline in voting turnouts, which have also been linked to the rise of extreme right-wing parties. The most recent example is the public anxiety over Marine Le Pen's (Front National) rising popularity ahead of the 2012 presidential election, which has led to parliamentary efforts to make voting compulsory in France.

Yet, the debate over the ideal-typical implications of compulsory voting remains inconclusive to this day. Scholars who defend it present it as a tool for maximising equality of political opportunity and ensuring political inclusion.¹³¹ Libertarian theorists, on the other hand, charge that it undermines individual liberty and democratic legitimacy.¹³² At the heart of the disagreement lie conflicting

¹³⁰ E.g. Lisa Hill is Australian, Lacroix and Engelen from Belgium.

¹³¹ Hill 2002, Lardy 2004, Engelen 2007, Lacroix 2007

¹³² Lever 2008, 2009, Rovensky 2008

conceptualisations and different prioritisations of liberty, equality and legitimacy. In particular, opponents of compulsory voting accept equality only as a formal requirement; they understand liberty in a classical negative sense and emphasise its importance above other principles, while viewing democratic legitimacy to be the result of voluntary and spontaneous civic engagement. In contrast, obligatory voting proponents are interested in substantive equality between citizens; they adopt the republican concept of liberty as non-domination and consider the validity of democracy as dependent upon universal suffrage, even if, in order to be effective, such suffrage has to be enforced by the state. As a consequence, the debate about the legal obligation to vote is rooted in a confrontation between rival political concepts, with each of the two sides of the debate coming from, and continuing, a different political and intellectual tradition.

The liberal-elitist critique of *universal* participation

If the first half of the twentieth century was marked by the rise of compulsory voting, the issue became a subject of intensive critique after WWII. Since high-turnout elections in Germany had yielded totalitarian regimes, while lower turnouts in the United States and the United Kingdom preserved democratic governments, it was concluded that mass participation as such could have disastrous effects.¹³³ As a consequence, underplaying the importance of universal participation on the one hand and emphasising elite responsibility on the other became a general intellectual trend. Thus, conservative anti-egalitarian ideas from the past were making a spectacular comeback. Post-war theorists echoed, *mutatis mutandis*, arguments against universal suffrage from the eighteenth and nineteenth centuries (Barnave, Guizot et al.); yet now they did not refer to a *de jure* restriction of voting rights, but to the undesirability of a *de facto* realisation of universal electoral participation.

American conservative thought played a leading role in this respect. For example, James Burnham conceived of elections as a practice through which ruling elites seek

¹³³ Massicotte et al. 2004, p. 33

to justify and legitimise their rule.¹³⁴ The electorate only had to accept or reject parliamentary candidates, rather than make decisions on political issues. In fact, most of the time the electorate was being manipulated by these elites with regard to their choices. “*One does not learn how to vote by voting*”, but one should know how to vote before arriving at the point of casting a ballot.¹³⁵ Universal suffrage was only a mechanism that enabled those to get ahead who were most adept at using it. In this sense, voting was neither a constitutive act of political representation, nor a learning experience for the voter.

In addition to this elitist intellectual trend, from the 1940s through the 1960s, the West had engaged in a militant condemnation of the totalitarian practices behind the Iron Curtain. Amidst the reality of the Cold War, reaffirming liberal values and democratic freedoms was more than a defence of political ideology. It had essentially become a matter of existence to define the traits that distinguished the free West from the oppressive East, with the former constructing its identity in opposition to the latter. In this context, any form of restraint was viewed with suspicion *a priori*, the more so when it took place within a system of un-free and unfair one-party elections, like those in Communist states.

It was feared that compulsory voting could serve as a device for legitimising undemocratic or poorly performing leaders in the absence of any better alternatives. W.H. Morris-Jones warned that a legal obligation to vote could be used by authoritarian governments as a tool to ‘correct’ deviant political behaviour. Insistent in his denunciations of the Soviet reality, Morris-Jones claimed that the arguments about “*a Duty to Vote belong properly to the totalitarian camp and are out of place in the vocabulary of liberal democracy*”.¹³⁶ The latter should simply accept “*that people are free to interest themselves, or disinterest themselves, as they please in politics*”.¹³⁷ Hence, voter apathy was seen as a political virtue, an essential reminder that politics must be limited, non-fanatical and allow for a variety of human expression.

¹³⁴ Burnham 1943, pp. 236-237

¹³⁵ Sartori 1962, pp. 10-11

¹³⁶ *Ibid.*, p. 25

¹³⁷ Cited *ibid.*, pp. 36-37

In fact, low civic engagement in politics was seen as a sign of a healthy democracy.¹³⁸ In addition, it was regarded as natural for the many to be ignorant and self-interested, which was why government should be left to the professional politicians. Low civic engagement reflected a state of good governance and general satisfaction with public policies. Conversely, excessive participation in elections was a sign of crisis. Citizens were only driven to participate in greater numbers if they felt that their interests were threatened by governmental decisions. From this point of view, fluctuating levels of political participation worked as a reliable indicator of government performance.

*“Participation and consent may be useful and desirable, but only as aids to a complete and adequate debate. [...] If a symphony is scored for fifty instruments, there is little to be gained by trebling the number; massed bands are neither here nor there so far as the quality of the music is concerned. In a similar way, heavy polls are largely irrelevant to the healthy conduct of political business.”*¹³⁹

Furthermore, it had long been questioned whether it was desirable to include the votes of citizens who were not voluntarily interested in elections. Henry Abraham thought that *“without compulsion a very desirable sifting of the electorate takes place, since only those who have a genuine interest and knowledge of public affairs usually take the time and trouble to go to the polls.”*¹⁴⁰ Similarly, it was argued that obligatory participation would produce a lot of ill-considered or protest votes that would bolster populist parties. It was believed that whenever voter mobilisation was in the rise, populist or demagogical leaders were at work trying to control the masses. Indeed, even today, this has been a central argument for abolishing obligatory voting in Belgium.

All in all, the idea that not everyone’s voice is necessary for the quality of decision-making reflects a central premise of the liberal-elitist view of compulsory voting. In general, although these views were generated and must be regarded in the Cold War

¹³⁸ Lipset 1959, Chapter 6

¹³⁹ Morris-Jones 1954, p. 35

¹⁴⁰ Abraham 1955, cited in Birch 2009, p. 51

context, they do establish a link between earlier elitist thinking about democracy and later enemies of compulsory voting, especially from the camp of political sociology.

Thus, as Richard Katz notes, compulsory voting is oppressive not only in countries where elections are corrupt, but also in advanced democracies, where legal and other barriers prevent new candidates from running. “*When voting is compulsory, there is no way to tell a coerced choice among evils from a voluntarily expressed positive preference.*”¹⁴¹ The factors that inhibit voters from participation in elections are not always indifference and a lack of interest, but “*a paucity of choices or a lack of evident connection between electoral choice and policy change*”.¹⁴² Low levels of turnout are thus seen by many empirical scholars as a registry of popular disaffection; non-participation is a means by which voters may protest against narrow electoral choices or express their disaffection with the party system in place.

In this sense, the obligation to vote not only fails to address political alienation, but removes a valuable tool for knowing when things go wrong:¹⁴³ “*It targets a symptom rather than the causes of disengagement from the political system. There is an obvious risk that once it has raised turnout, political elites will cease to worry about the lack of connection between themselves and the electorate.*”¹⁴⁴ So, for democratic elitists, keeping turnout levels high and voter interest alive is a challenge that parties and politicians constantly need to measure up to. Mandatory voting would do away with this challenge in a superficial manner and perhaps eventually lead to arbitrary decision-making.

The participatory critique of *electoral* participation

Contrary to democratic elitism, advocates of democratic participation have, of course, praised the importance of any kind of popular input into political decision-making.

¹⁴¹ Katz 1997, p. 244

¹⁴² Franklin 1999, p. 206

¹⁴³ Ballinger 2006, p. 22

¹⁴⁴ Baston and Ritchie 2004, p. 35

However, electoral participation has not been on the top of their agenda. In fact, disillusionment with elections lies at the centre of their alternative propositions, which often aim at circumventing rather than complementing elections.

In the 1970s, Carole Pateman wanted to educate the public in democracy by democratising non-governmental structures of real life. Her rationale included the observation that “*the experience of participation in some way leaves the individual better psychologically equipped to undertake further participation in the future.*”¹⁴⁵ Participation in the workplace or in industry creates a sense of ‘political efficacy’; it fosters a democratic character and develops the individual’s capacity to participate in governmental structures. Hence, according to the participatory school of thought, democratic education may take place at home or at work — in any case, not through obligatory attendance at a polling station.

Electoral participation alone fails to address the needs of modern politics, according to Benjamin Barber as well. He thinks that requiring minimum political participation in the existing representative system would only legitimise the reality of passive citizenship, voter apathy and cynicism.¹⁴⁶ Resolving the problem will come by creating more participatory forms of government. Instead of simply delegating the political will to representatives, as the liberal-elitists would have it, he prefers direct schemes of political engagement, such as national referenda, elections by lot, neighbourhood assemblies and universal national service. These will not replace the system of parliamentary representation altogether, but enrich it with opportunities for public discussions and other participatory channels. Yet, in order to emphasise the importance of direct engagement, Barber, too, sometimes plays down the importance of voting in national elections.

Theorists of participatory democracy are thus traditionally less favourably disposed towards political representation. Their ideas for rectifying the current state of democracy are less channelled towards improving electoral participation, than

¹⁴⁵ Pateman 1970, p. 45

¹⁴⁶ Barber 1984, p. 219

towards inventing new, multiple schemes of political engagement.¹⁴⁷ For them, participation cannot be reduced to periodically selecting members to decision-making bodies, which as a choice is excessively indirect and artificial. On the contrary, public engagement is conceived as presupposing a variety of opportunities for citizens to make binding decisions themselves. As a side-effect, this expanded reading of democratic participation tends to draw attention away from elections and voter mobilisation.

Radical and anarchist denunciation of elections

The significance of voting has been criticised much more deliberately by anarchists, who became very active in the 1960s. For them, renouncing representative democracy and all its devices has been a matter of ideological urgency. Building on the tradition of Proudhon and Bakunin, they have declared universal suffrage “*the greatest and most refined expression of political charlatanism*”.¹⁴⁸ Elections only serve to legitimise the ‘bourgeois’ status quo and, as such, they rob the people of the power to resist by other means against social suppression. “*Political rights do not originate in parliaments; they are, rather, forced upon parliaments from without*”.¹⁴⁹ Participation in elections is a sign of weakness and submissiveness to the deceptions of the authorities.

This epitome of the ideology of abstention has usually been disseminated through pamphlets and graffiti. On the eve of the 1965 French presidential elections, the *Alliance ouvrière anarchiste* invited “*the free men to abstain massively, to say no to all candidates*”.¹⁵⁰ Equally, wall inscriptions in French suburbs read “*Do not vote*”, while the German Spontis in the 1970s used the following slogans: “*Whoever hands over his vote, does not have it anymore*”,¹⁵¹ and “*Elections do not change anything; if*

¹⁴⁷ Dalton 2008

¹⁴⁸ Cited in Lancelot 1968, p.261

¹⁴⁹ R.Rocker, *Anarcho-Syndicalism: Theory & Practice*, Modern Publishers 1947, p. 130

¹⁵⁰ *Le Monde*, 30 September 1965, cited in Lancelot 1968, p.261 « *les hommes libres à s’abstenir en masse pour dire non à tous les candidats* »

¹⁵¹ “*Wer seine Stimme abgibt hat sie nicht mehr*”

they did, they would have been prohibited'.¹⁵² Thus, the anarchist post-war advocacy contributed to an outright condemnation of elections and voting.

Lastly, a recent post-democratic current of thought has launched a different critique of elections, founded mainly on the empirical reality of what they view as a dysfunctional system. Colin Crouch regards elections as having become 'a professionally controlled PR spectacle with a few preset and personified agenda issues'¹⁵³. Or, Chantal Mouffe ascribes the generalised voter malaise to the decline of ideology and the lack of political alternatives, which has emerged parallel to the rise of neo-liberalism, privatisation, globalisation and expert-rule as un-debatable, depoliticised, universal norms.¹⁵⁴ Democracy lost out to Liberalism, the principle of Equality over the principle of Liberty, which is considered sacrosanct. It is even possible to argue that the prevalence of expert rule has caused an internalised intimidation of voters, who think that they are not capable of making choices on matters that affect the general interest. From this point of view, electoral abstention is understandable and perfectly justified.

To sum up, the assumption that the exercise of the right to vote is a constitutional condition of a democratic society has very often been contested. In the aftermath of fascism and its destructive effects in undermining the value of democratic legitimacy, attention has shifted from the role of voters to the responsibility of political leaders. Accordingly, a liberal-elitist legacy has emerged that offers justifications for abstention and portrays citizens as ignorant and self-interested. This critique of voting has been joined by arguments from the side of radical participatory theory. For the latter, popular participation is real and effective primarily as an everyday activity and not as a standardised and formulaic ritual applied at infrequent intervals. Political anarchists continue to maintain that elections are an insidious tranquilizer that serves to co-opt the potentially revolutionary spirit of the people. Though unacknowledged, these schools of thought constitute the original pool of objections that have been raised against compulsory voting.

¹⁵² *"Wahlen verändern nichts, sonst wären sie verboten"*

¹⁵³ Crouch 2004

¹⁵⁴ Mouffe 2011

Political liberty

Critics of compulsory voting have concentrated much of their argumentation on the assumption that obligatory voting violates an inalienable right to abstention, and thereby, the fundamental value of individual liberty. On the other hand, advocates of the system stress the idea that a moral civic duty may be grounds for a legal obligation. To my mind, the disagreement results from the fact that the two sides employ different concepts of ‘liberty’ and ‘(voting) rights’. The content of these ideas with regard to the debate on compulsory voting is then developed in opposite directions.

There is a link between different schools of democratic thought on the one hand and the different conceptualisations of ‘liberty’ on the other. Those who oppose the reform come from a tradition that understands democratic liberty as the negative concept of freedom from coercion.¹⁵⁵ As a result, making the act of voting mandatory is a straightforward violation of personal liberty. In particular, it is deemed to be a violation of freedom of conscience and the freedom to publicly manifest one’s views, as was argued before the European Court of Human Rights.¹⁵⁶ The principle of free elections, they say, requires that no threat of sanction or legal coercion should impose limitations on these civil liberties. Voters should always have the chance to renounce any or all candidates in an election without being prosecuted for such an act.

Indeed, opponents insist that the duty to vote infringes on an inalienable and inviolable ‘right *not* to vote’. In the words of Anabelle Lever, “*the right to abstain, or to refrain from political self-identification and participation is an important one, symbolically and practically.*”¹⁵⁷ Voters should have the freedom to decline an official invitation to vote simply on the basis of negative feelings about elections:

¹⁵⁵ Berlin 1969

¹⁵⁶ ECHR 1972

¹⁵⁷ Lever 2009, p. 67

*“Reasonable people can disagree about the value of political participation relative to other forms of social participation and support, and even those who value political participation may disagree about the value of voting, compared to other forms of political activity.”*¹⁵⁸

These views are clearly congruent with the participatory critique that elections are a substandard form of political engagement. They also relate to the libertarian critique of any civic obligation as a violation of personal freedom. For both reasons, citizens should have the right to abstain. The view that the state imposes an obligation to vote in order to protect citizens from damaging their own interests makes obligatory voting appear to be merely a form of state paternalism.

Yet, this argument is diminished by the observation that, in pragmatic terms, the only action required by the law is to attend the polls; there is no limitation as to the content of the voter’s choice.

*“The term ‘compulsory voting’ is a misnomer. It is only registration and attendance at a polling place (entailing having one’s name marked off the roll, collecting the ballot papers and putting them in the ballot box) that is compulsory. The Australian Electoral Commission (AEC) may not seek to compel people to mark their ballot paper therefore it is the opportunity to participate rather than the voting participation itself that is actively sought by the state.”*¹⁵⁹

In other words, voters may cast a blank or spoiled ballot, which is essentially an equivalent of abstention. Especially the option of casting a blank ballot, in combination with the secrecy guaranteed by the voting booth, ensure that the basic electoral rule of free, i.e. uncoerced, suffrage is observed and that the voter is provided with a wide option of voting possibilities. Consequently, as confirmed by a decision of the European Court of Human Rights, neither freedom of electoral choice nor personal autonomy is threatened by a legal obligation to attend the polls.¹⁶⁰

¹⁵⁸ Ibid.

¹⁵⁹ Hill 2002, pp. 82-83

¹⁶⁰ ECHR 1972

Furthermore, Justine Lacroix argues that an obligation to vote in general does not contradict the logic of individual liberty.¹⁶¹ To her, political participation is a constitutional condition of liberty; the latter may, in fact, be strengthened rather than weakened by an enforced obligation to participate. She explains that even classical liberal thinkers, who traditionally defend individual autonomy, place more value on the type of positive liberty that is developed through political participation, as opposed to negative liberty, i.e. the absence of interference from any external source of power.¹⁶²

This interpretation derives from an alternative conception of positive liberty: to be free, one must be subject to one's own will. Self-government is a prerequisite for freedom; hence, the enforcement of a mechanism that ensures self-government is not a violation, but an affirmation of liberty. Moreover, since no causality exists between democracy and negative liberty, she believes that the latter is basically an exaggerated version of liberty, applicable only in the free state of nature or in a lawless society. In other words, the only type of liberty that compulsory voting does violate is a natural or libertarian conception of freedom understood as a complete absence of laws.¹⁶³ In fact, the actual violation of the positive type of individual liberty that exists in democratic states occurs when someone avoids the responsibility that comes with voting, which is a way of free-riding against citizens who do vote.

However, most theorists reject this positive reading of liberty for its essentialist and radical Rousseauian overtones. Indeed, neo-republican theorists like Quentin Skinner and Philip Pettit argue that there is a third -quasi-negative- type of liberty. In Pettit's terms, this equals an absence of domination. Whereas the classic negative concept of freedom as non-interference requires the absence of *any* interference, freedom as non-domination is identified with the absence of *arbitrary* interference. In this context, freedom is compromised by the mere existence of a potentially dominating power, even if this power does not actually bend the will of subjects to its own will.¹⁶⁴ The

¹⁶¹ Lacroix 2007

¹⁶² Lacroix 2008, pp. 95-102

¹⁶³ *Ibid.*, 104

¹⁶⁴ Pettit 1997, p. 88

domination of non-voting citizens by voting citizens through their choice of government and subsequent policies is such an example of non-liberty. Legal guarantees against this kind of domination are a *desideratum* for neo-republicans, because they make it possible to live freely. Pettit's theory reconciles negative liberty with participation and, in fact, makes inclusiveness a fundamental and possible legal requirement in the design of representative institutions.¹⁶⁵

Heather Lardy also denies that the act of voting carries a positive, i.e. developmental, value or creates possibilities for self-transformation.¹⁶⁶ She also accepts that traditional civil liberties (free speech, freedom of assembly etc.) are founded on the negative liberty of non-interference from the authorities into individual choice and action.¹⁶⁷ But suffrage has still a different judicial history and conceptual justification than do civil liberties. The freedom to vote does not imply a passive possession of the franchise. Its main purpose is to promote popular participation in political life and, as such, to develop an active political culture. Therefore, she agrees, a legal requirement to participate in elections is perfectly consistent with Pettit's concept of freedom as non-domination.

“The right to vote represents a freedom which cannot be diminished by being compelled because any exercise of the right, however it is initiated, contributes to the practice of freedom as non-domination. By voting, a person registers her status as a political equal, a full member of the democratic community. She does this even if she votes reluctantly or apathetically, or because compelled to do so by law. On this account, non-voting brings with it a serious risk of domination by those classes which do vote regularly, and by the governors whom they elect. To prevent this, voting may be compelled consistently with the idea of liberty as non-domination, and, therefore, with the idea of the right to vote.”¹⁶⁸

¹⁶⁵ Pettit 1997, p. 191; see also Skinner 1998; Lardy 2004; Engelen 2007, p. 34; Birch 2009, p. 47

¹⁶⁶ Lardy 2004, pp. 311-312

¹⁶⁷ *Ibid.*, p. 310

¹⁶⁸ *Ibid.*, p. 314

In sum, many of those who sympathise with obligatory voting are influenced by the neo-republican or protective idea of liberal democracy.¹⁶⁹ The main line of thought is to protect the ruled from their rulers and from each other. Regular elections and the right to vote help citizens safeguard their interests from arbitrary acts of the state, while *effective* universal and equal suffrage prevents certain segments of the population from being dominated. Indeed, the issue of obligation comes in precisely when there is a discrepancy between the theory of voting rights and the practice of their actual exercise.

Equitable political opportunities

Non-voting is widely believed to violate political equality in practice, as those citizens who abstain are not being equally involved in the representative process. This leads to an overrepresentation and concentration of power in the hands of voting individuals, which subsequently reproduces a scheme of political, social and economic domination. In Lardy's words, "*the liberty which the right to vote protects is concerned essentially with guaranteeing the formally equal democratic standing of all electors*".¹⁷⁰ Through abstention, non-voters lose an equal chance of being represented in government, whereas active voters receive a disproportionate share of the electoral results.

The claim that mandatory voting guarantees political equality has permeated not only normative discussions, but also empirical scholarship. Indeed, several studies have shown that low turnout is biased against citizens of lower education, income and age.¹⁷¹ Citizens from disadvantaged groups, including those belonging to ethnic, linguistic or religious minorities, have stronger tendencies to abstain from elections. For example, two studies conducted in Belgium in the 1990s showed that abolishing compulsory voting would lead indeed to an overrepresentation of citizens of higher

¹⁶⁹ Held 2006, p. 70

¹⁷⁰ Lardy 2004, p. 312

¹⁷¹ Lijphart 1997, pp. 1-2

age, social status and formal education.¹⁷² Social inequality is thereby reproduced in the domain of political rights.

These turnout inequalities do not only affect constitutional rights, they are also reflected in the electoral results and, subsequently, in public policies.¹⁷³ *“The state is not simply obliging voters with an expressive opportunity to blow off steam; it is also inviting them to engage in activity which materially affects their lives and economic interests.”*¹⁷⁴ Voluntary voting produces unequal political influence and misrepresentation in favour of the voting population, which comes presumably from the higher socio-economic strata. Through this voting bloc’s choice of parties and the consequential adoption of policies favourable to the bloc, the political inequalities are fed back into the economic sphere. This leads to a vicious circle of economic and political inequalities that are alternately transformed into one another.

Politicians are less inclined to respond to the needs of citizens who do not show up at the polls. As a consequence, they are less likely to take into account the interests of abstaining citizens during the legislative process. The result is returning political inequalities and social injustice, to which obligatory voting may be able to put an end. In fact, an empirical study claims that the enforcement of voting has, in some cases, improved income distribution.¹⁷⁵ As a result, mandatory voting can produce a more equal influence on policy outputs and thus involve voters more effectively and equally in political representation.

Of course, *“full participation does not guarantee an equitable outcome (which is in part dependent on the electoral system), but it may be seen as a necessary condition of such an outcome.”*¹⁷⁶ Equitable treatment of individuals relies on *“protection against political outcomes that would place one’s prospects in serious jeopardy.”*¹⁷⁷ Such a reassurance that each citizen has equal power over political outcomes is a necessary condition for a procedural type of political equality that reconciles the

¹⁷² De Winter & Ackaert 1998; Hooghe & Pelleriaux 1998

¹⁷³ Lijphart 1997, p. 4

¹⁷⁴ Hill 2002, p. 92

¹⁷⁵ Chong 2005; Hill 2000

¹⁷⁶ Birch 2009, p. 47

¹⁷⁷ Beitz 1989, p. 14

plurality of substantive interests with the idea of political fairness. This may consist not merely of formal insertion of equal citizens in the political structure, but also of public recognition of each person's equal status.¹⁷⁸ Obligatory voting secures equal suffrage in formal terms, by making participation effective, and in symbolic terms, by expressing the equal value of persons in the political system.

Indeed, the purpose of compulsory voting is not to receive everyone's vote, but to maximize equality of political opportunity.¹⁷⁹ *“Attendance at a polling booth provides an opportunity for participation that transcends the simple act of casting a formal vote and well beyond that which is afforded by abstention.”*¹⁸⁰ Protecting the citizens' opportunities to participate equally in public affairs is a minimal requirement of a democratic state. Thus, by obliging voters to attend the polls, *“the state operates a kind of elaborate affirmative action system in order to ensure that everyone, regardless of contingent status, and obstacles experienced, is enabled to deploy this capacity.”*¹⁸¹ In this sense, the central logic behind making voting obligatory is part of the general policy aim of establishing practices to prevent exclusion from political participation.

Political literacy and public engagement

It is possible to claim that obligatory voting also protects citizens from the political effects of abstention. Regardless of principled opinions on electoral participation, it remains a pragmatic fact that the message of abstention is not always clear. It may signal political protest towards a specific policy, a reaction to the available choice of parties, a sign of tacit consent or general indifference.¹⁸² What is more, recently it has been suggested that abstention results mainly from lack of trust in political institutions, rather than dissatisfaction with an incumbent government.¹⁸³ And

¹⁷⁸ Ibid, p. 92

¹⁷⁹ Hill 2002, p. 91

¹⁸⁰ Ibid., p. 83

¹⁸¹ Ibid., p. 91

¹⁸² Hill 2002, pp. 85-87; Engelen 2007, p. 31

¹⁸³ Cox 2003; Grönlund & Setälä 2007

because the political will of abstainers remains basically unknown, it is often used by parties according to the interpretation that suits them best. Therefore, obligatory voting arguably protects individuals from a partisan exploitation of their abstention. For example, Lisa Hill notes:

*“Abstention only gives you abstention and an ambiguous silence. Attendance at a booth gives you a far greater range of options than abstention, among them: a formal vote; a donkey vote; a blank vote; a protest vote; a punishment vote; a reward vote; even a vote that helps to give an independent Senator a disproportionate amount of power in the Senate and so on.”*¹⁸⁴

Conversely, legally obligatory voting has been defended as an excellent tool for political education. It establishes voting as a social norm and helps individuals internalise it as such, which was previously realised through tighter social connectedness that produced and controlled that norm.¹⁸⁵ The obligation to attend the polls actually may motivate more voters to cast a valid ballot: *“the horse which would be led to the water would actually drink”*.¹⁸⁶ In other words, it has been claimed that the number of uninterested normally abstaining voters would not automatically translate into blank or spoiled ballots.

The basic hypothesis of this argument is that a voter who is forced to vote will actually try to get more informed about politics and thereby become more actively engaged compared to someone who does not have to vote.¹⁸⁷ Those in the first group will develop more awareness of political matters and gather information to decide which parties or candidates may best represent their own interests; as a result, they will most likely make an informed decision at the ballot box. Indeed, it has been observed that compulsory voting laws increase media consumption¹⁸⁸ and the

¹⁸⁴ Hill 2002, p. 93

¹⁸⁵ Hasen 1996, pp. 2164-2179

¹⁸⁶ Morris-Jones 1954, p. 32

¹⁸⁷ Lijphart 1997, p. 10; Matsler 2003, p. 955

¹⁸⁸ Loewen et al. 2008. The authors, nevertheless, reach the opposite conclusion: political information is not enhanced by compulsory voting. In particular, they claim that if compulsory voting makes any difference on political information at all, it is as a second-order effect and not as a direct consequence of the fear of penalties for non-voting. For example, voters may gather more information on candidates because they are driven by a more participatory political culture in general or by

frequency of political discussions through which citizens acquire knowledge of politics and an interest for further public engagement.¹⁸⁹ By discussing political matters, citizens learn about political events, hear alternative opinions and become exposed to different political ideas. All such activities expand their political sophistication and education. Because gathering information is time-consuming and involves a great deal of cognitive effort, uninterested individuals would, under normal circumstances, neglect to do it.¹⁹⁰ Hence, obligatory turnout may increase both the incentives to vote and political literacy as such.

Democratic legitimacy

Both advocates and opponents of compulsory voting argue that their views are a guarantee of democratic legitimacy. Both sides are valid insofar as each considers 'legitimacy' to refer to the outcome of their own principles. Thus, for the supporters of electoral obligation, full and effective political participation is the foundation for democratic legitimacy, whereas for the opponents, democratic legitimacy must include the freedom to abstain.

In the first category, Lisa Hill notes, "*the more completely the preferences of the majority are registered, the more democratic the system will be*".¹⁹¹ Indeed, the value of mandatory voting is that it creates an inclusive electoral democracy, where the voices of the most reserved groups in society are also heard. Under such a scheme, all citizens are guaranteed the opportunity to communicate their concerns to prospective representatives. In addition, the latter are forced by the new circumstances to address the needs of the entire electorate and base their decisions on the democratic criterion of collective rationality. Conversely, "*when a government's mandate is informed by incomplete information about the wishes of the electorate, the legitimacy of its*

systematic state initiatives to educate voters, which may be the result of having a system of obligatory voting in place.

¹⁸⁹ Milazzo 2008

¹⁹⁰ Ibid., p. 6

¹⁹¹ Ibid., p. 82

decisions may be in doubt".¹⁹² Compulsory voting thus becomes a necessary ingredient not only for inclusive representation, but also for deliberative democratic legitimacy.

Yet, for opponents of mandatory voting, voluntary political participation, or the right to abstain, is more important for the democratic credentials of a political system. Socio-economic disparities in turnout are not significant at all as long as a formal equality of political rights is established in the constitution.¹⁹³ Political fairness and representativeness cannot be restored through a system of full participation alone, as other institutional factors such as proportionality, electoral thresholds, etc. play a role too. In addition, full participation does not guarantee an accurate reflection of community preferences because of the resulting increase in the number of random votes.¹⁹⁴ In any case, democratic legitimacy is not a consequence of electoral inclusion, but derives from the freedom from any constraint, including the obligation to vote. In other words, a political system can be democratic only when it guarantees that citizens may choose among a variety of participation paths, even if this means the option of not participating at all.

Concluding note

The choice between obligatory or voluntary electoral participation is riddled with a conceptual complexity that has triggered much political and philosophical controversy in recent years. The electoral advantages and disadvantages of the political actors involved in the parliamentary debates have played an important role on the abolition or introduction of such a system. In particular, parties have taken into account the problem of voter mobilisation and the need to counter rising right-wing extremism¹⁹⁵. These political discussions soon led to a more academic engagement with normative questions around electoral reform.

¹⁹² Hill 2006

¹⁹³ Lever 2010

¹⁹⁴ Rovensky 2008, pp. 111-120; Jakee and Sun 2006

¹⁹⁵ These arguments were raised for example in the late 1990s Belgian debate.

Supporters of compulsory voting criticise the structural outcomes of today's voting systems, with regard to the voting blocs that they produce, as arbitrary and elitist. They argue that massive abstention not only produces a sketchy snapshot of the popular will, but it also reproduces social inequalities in the political field. It compromises political equality in practice and as such contributes to the domination of certain segments of the population by others. In this context, coming out in favour of compulsory voting means defending effective political equality, social justice, democratic legitimacy, representativeness and non-domination. Much more than a technical contrivance, compulsory voting can be regarded as a fundamental republican cause, or a clarion call for more democracy.

For the other side, the diametrically opposed alternative of voluntary electoral participation is what is crucial for the democratic quality of a political system, since other forms of public engagement are regarded as being of equal or greater value than voting. A legal obligation to vote violates freedom of conscience, the right of abstention, and freedom from state interference in individuals' lives in general. In fact, the protection of these principles is an essential guarantee of democratic legitimacy. These scholars draw on post-war intellectual streams that saw diminished value in voting as such. They tend to assume that not all voters possess the requisite political literacy or knowledge to choose good candidates or the parties that best represent their interests. Hence, abstention of a part of the electorate (i.e. 'voter apathy') is actually a sign of a healthy democracy. For these reasons, opposing compulsory voting is seen as a fight for voluntarism and individual freedom.

Whether obligatory voting is seen as a normative condition that will enhance or weaken the quality of democracy, its normative arguments are situated in a specific political-ideological context. My point has not been to argue for the truth or falsity of either claim, but to show that the two sets of arguments are based on conflicting political views and conceptual definitions. Those who understand the concept of democracy as bound primarily to negative liberty are in principle against compulsory voting. Those who think that democracy is premised above all on political equality are in favour. A reconciliation of the two views is possible only if we want to see the

political debate on democratic values reduced to a single monolithic and dominant 'democratic' ideology.

Chapter 9: Conclusions

The contemporary normative debate on compulsory voting will remain open as long as it constitutes the scholarly extension of what should be primarily understood as a political debate. Although it would be an exaggeration to claim that theorists act as philosopher-spokesmen of political parties, it is hard to imagine how the issue can be depoliticised and analysed outside a pragmatic context. In fact, there is little consistency between political ideas, party identities and official positions on the issue. Thus, the defence of voluntary voting as an act of liberty is endorsed by the Australian and Flemish Liberal Parties, but it does not convince the French ‘liberal’ François Bayrou, nor the Canadian Liberal senator Mac Harb, while the Belgian Francophone Liberals remain divided on the issue. As a result, despite the obvious contradiction, compulsory voting appears as an item that can fit into a Liberal party’s agenda, provided that it does not harm its electoral prospects.

The historical analysis of case-studies has demonstrated that, if a question arises whether to introduce or abolish compulsory voting, the decision is never made on abstract terms, based merely on the principles and ideas involved. It becomes rather a political choice determined by the immediate socio-political context and related to the specific argumentative and institutional aspects that come with it. Parties position themselves according to political calculations, as has been proven by the use of identical arguments both to defend and to reject the reform.

For example, the principle that voting is a moral duty has often justified the introduction of a legal obligation. Yet, in the Belgian parliamentary debate of 1893, drawing on the same concept of moral duty, the Liberals concluded that voters possess in advance the sense of responsibility associated with the act of voting; consequently, a legal obligation would undermine this inherent sense of duty and work against the philosophy of civic obligation. In other words, it is not the ideological doctrines that determine a party’s position on a policy, but the choice of

policy that is primary; the rhetorical use of classic ideas to draw suitable conclusions follows.

Because of the significance of political contingency, there are situational differences between the introduction of compulsory voting and its abolition. In the first situation, the stakes are higher, as the political effects must be weighed against the general acceptance of inserting the new principle into the political morals of a country. In the second situation, the benefits or shortcomings of compulsory voting have already been absorbed by the system: it is part of the prevailing ethos and constitutes a standard variable amid the electoral balances of power.

Regarding the impact of compulsory voting on political outcomes, an identical argument is again used by both sides. Limiting the strength of far-right parties is today a central reason for the support for introducing compulsory voting among French conservatives. In contrast, the Flemish Liberals aim for the same objective in arguing for its abolition in Belgium. In other words, in countries that have a long history of compulsory voting, the practice has apparently become a systemic variable, to which the country's political dynamics have adapted.

Forecasting the levels of abstention and their political effects has been indeed a very subjective enterprise, and often used in misleading ways, in compulsory voting debates. In principle, most parties strive for high participation rates. Yet, in reality, their commitment is conditional and quite dampened when high turnouts are disadvantageous for their political interests. But the crucial problem is that abstention is unpredictable as regards the abstainers' group composition. It is not possible to tell in advance precisely how many citizens will decide not to vote, what they would vote had they voted and which party would benefit or lose from the situation. This ignorance is rhetorically exploited after elections by the defeated to justify their bad results and to put in question the legitimacy of the new government; it is exploited also by the winners to claim large percentages of voting support, which in real numbers may correspond to very few voters.

In fact, abstention is not necessarily considered a negative phenomenon. On the contrary, for anarchists, left syndicalists and radicals, from the nineteenth century until the present day, it is a political act *par excellence*. Democratic elitists also prefer that voters who are uninformed and disinterested stay at home on election day. Abstention can become a more or less official party line when political rights are violated, as in Greece in 1946 or France in 1863. This may also be the case on less severe occasions, as when a political group deems it more valuable for its public image to stay out of a contest, as New Democracy did in the 1992 by-elections in Greece or as the French Legitimists did in the mid-nineteenth century.

Another important aspect of the argumentation and application of the principle is in misused or corrupt electoral practices. It is obvious that enforcing the vote under certain circumstances can transform obligatory voting into an authoritarian tool of political oppression. This is the case in one-party systems, when some parties are banned, when political and civic rights are not respected or elections rigged, or when the option of casting a blank ballot is not guaranteed, as the examples of the French 1860s and Greece through much of the twentieth century have showed. However, compulsory voting has also worked in the other direction, as an action against fraud, as in nineteenth-century Belgium when it was deployed as a remedy against intimidation and abstention-buying. Today, there is arguably evidence that compulsory voting may work as a voter mobilisation aid for parties that maintain fixed clienteles. As a result, these parties may be advantaged compared to new or small parties that rely on less organised schemes of mobilisation.

In the political history of compulsory voting, it is noticeable that relevant law proposals usually came with other institutional changes. Of these, plural voting and proportional representation have been the most common, e.g. they were introduced in one package with compulsory voting in Belgium at the end of the nineteenth century. Plural voting is part of the same conservative rhetoric, as it relies on the *function* doctrine: suffrage should be numerically weighted in favour of enlightened citizens. Politically, plural and obligatory voting are both designed to give an advantage to moderate voters.

In contrast, proportionality belongs to the more democratic vision of ensuring fair, popular access to government. It converges with compulsory voting from the point of view of descriptive representation, since both contribute to an accurate reflection of voters' interests or opinions in the legislative body. In addition, proportionality supports the same goal of universal participation, by mobilising voters who would be unrepresented otherwise. In contrast, majoritarian systems do not seem to attach as much importance to the value of every single vote and are considered less participation-friendly. Hence, the existence of first-past-the-post systems in France and Anglophone countries¹⁹⁶ may have contributed to the rejection of compulsory voting there.

The most common principle that is paired with the legal obligation to vote is universal suffrage. The first bills to introduce compulsory voting were indeed launched in 1848 and 1870 in France and in 1893 in Belgium, which were defining moments for the extension of the franchise. However, compulsory voting was also suggested for electoral colleges, or in combination with voluntary registration — in Belgium it was combined with plural, i.e. unequal voting. In fact, mandatory voting without universality or equality is less of a democratic institution, and more an elitist tool of political discrimination. At the same time, when it is realised alongside universal and equal suffrage, it can realise popular sovereignty and political equality to a maximum degree. In other words, compulsoriness intensifies the effects, whether positive or negative, of other voting regulations.

Obligation is also described as a tool clearly suited for politically educating new voters. In our times, the electoral enfranchisement of immigrants and third-country nationals as well as the debate about their civic integration can also be seen as a reason to support obligatory voting, although it is never explicitly mentioned in the debates.

¹⁹⁶ Australia is an exception, as compulsory voting coexists with a majoritarian election system for the House of Representatives. However, the use of preferential voting introduces elements of proportionality there, too.

Another group of new voters, whose political inclusion and civic education is targeted, are young people, who seem to entertain a customary aversion towards elections. But conservatives may also favour obligatory universal suffrage, often for fear of the exact opposite: that new voters may at any time vote massively for some new party and thus outnumber old voters and overturn the status quo.

This thesis dealt principally with the obligation to vote in legislative elections, leaving aside plebiscitarian or other types of contests. The reason was that, historically, the issue has indeed been debated mainly in connection with national assemblies. The concept of a descriptive representation of the electorate inside a parliament has justified that idea that everybody must participate in elections, whereas this is not self-evident in the case of referenda, for example, when the objective is to decide on a political issue as such. However, the constitutional significance of certain referenda, as well as their ability to raise citizens' awareness about the proposals under discussion explains why turnout requirements have been used in several cases — for example, for the Kosovo independence referendum — and why they could be legitimately applied in other cases.

Local and federal (for example, EU) elections have also been criticised for producing very low turnouts, which has provoked discussions and proposals on making the vote compulsory. In particular, local elections offer the benefit of proximity to the grassroots and the possibility of people to have immediate knowledge about the issues on the agenda and, in this sense, offer easier access to collective decision-making. Moreover, the obligation to participate was first established in small communities or assemblies, such as the ancient Greek *Ekklesia* or the Swiss *Landesgemeinde*, where voting was direct; the revival of this participatory paradigm in 'neighbourhood assemblies' today may also signal the return of the idea of obligation.

The rationale of obligation also has a strong relation to the idea of facilitating the voting process for voters. The connection is both causal and consequential. Because voting is compulsory in a given country, the state has an increased obligation to ensure that voters will have maximum possibilities to access the polls. This argument, heard often in e.g. Australia, can serve as a justification for the introduction of online

voting or provisions for assisted-voting for disabled persons. In the other case, countries without obligatory voting may change their policies and introduce it, in order to create increased possibilities for voters to participate. Both obligation and easy access to voting procedures result from an interest in increasing public engagement and tackling voter apathy.

A central issue permeating the political debates is which type of sanctions for abstention would be theoretically legitimate and practically enforceable. The most 'liberal' variety assumes that the punishment is already self-inflicted: a voter punishes herself by not voting, because she loses the chance to express her interests. Such a perspective legitimates a pro-active stand on the part of the state to engage in public awareness campaigns on the importance of voting.

In reality, the three main suggestions include financial, moral and political sanctions. All were devised by the French conservatives in the late nineteenth century. It seems that French Republicans — as well as Belgian Catholics — were more in favour of the latter two, preferring the publication of abstainers' names, compulsory community service, suspension of voting rights and revocation of the right to stand in elections. These were based on the assumption that those who abstained inflicted damages on other citizens and were from a moral point of view not worthy of carrying the title of voter. This view was consistent with their pedagogical programme to produce ideal republican citizens who had a full sense of their civic responsibilities.

In this context, the payment of fines was considered to be of lesser educative value, though it could still serve as a first reprimand to abstainers. The main issue here was the unequal effect that small fines would have on different classes of voters, which led to the idea of introducing progressive fines based on personal income. Corporal punishment, e.g. imprisonment, was found in general to be disproportionate. Other sanctions that were rejected early on included the temporary loss of a parliamentary seat for the whole voting district, or the payment of the costs of a run-off election. These, however, were considered unfair and arbitrary, because they punished collectively both voters and abstainers, or were disproportional to the degree of abstention.

In fact, how to implement sanctions has been a crucial problem. From a logistical point of view, identifying and prosecuting thousands of non-voters has proven to be a daunting challenge. In many cases, the state was unable to organise a successful system of indictment, which brought the legal obligation effectively into disuse. In fact, politicians have often emphasised that making voting obligatory has no functional legitimacy because it is unenforceable. This is true, for example, with regard to Greece and to some extent Belgium. In Australia too, the admission of a number of valid excuses for abstention has reduced the challenge of having to carry out an unmanageably large number of prosecutions. Perhaps the Swiss canton of Schaffhausen, which demands the payment of very small fines (3 CFR) and has a low-cost decentralised system in place for their collection, is the only good example for the implementation of obligatory voting.

In any case, mobilising state administrative bodies for the punishment of abstention requires political will and popular acceptance of the principle. Political theorists have tried in vain to legitimate obligatory voting as a normative condition that will enhance the quality of democracy. Others fiercely attack it as a fundamentally undemocratic idea and practice. My point has not been to demonstrate the superiority of either claim over the other, but to show that their arguments, where they do not overlap, have usually been based on conflicting political interests and conceptual definitions. Those who understand the concept of democracy as bound to negative liberty are in principle against compulsory voting, while those who think of democracy as premised on political equality tend to stand in favour. A reconciliation of the two views is desirable only if we seek an end to the existence of semantic multiplicity, ideological pluralism and political struggles.

Although it may at first sight appear as an institutional or technical matter only, the question of compulsory voting pertains to the general discussion on the merits, efficiency and authenticity of electoral democracy. The denunciation of the need for full participation hides negative presumptions about the significance of democracy, or a different conception of what democracy is. But even if in theory high participation is desirable, the praxis shows that this seldom occurs, making democracies seemingly

doomed to become “λόγω μεν δημοκρατία, έργω δε υπό του πρώτου ανδρός αρχήν”
[government that goes under the name of democracy, but is, in fact, the supremacy of
a single powerful individual]¹⁹⁷.

¹⁹⁷ Plutarch (75 AD), *The Lives: Pericles*, Book VIII, transl. J.Dryden in The MIT Internet Classics Archive

ANNEXES

Annex 1. French obligatory voting law proposals, 1848-1946

DATE	DEPUTY	POLITICAL AFFILIATION	SANCTIONS AND REGULATIONS	FOLLOW-UP
Sept 1848	Etienne	Droite	-	-
Feb 1849	De L'Espinasse	Droite	*1 to 5 francs / 5 to 15 francs if repeated *fines according to the voter's income *only presence at the polls, not voter expression * ¼ voters or absolute majority of winner to validate election	Commission headed by Leon Faucher (Droite) - May 1850
-----	-----	-----	-----	-----
June 1871	Tallon-Fournier	Centre-droit	*revocation of voting right for 3 to 24 months	Beaussire (Centre-gauche)
March 1872	De Castellane	Centre-droit	*excuses presented to the <u>mayor</u> * <i>affichage</i> + three months community service, redeemable by fine * if winners receive less than 1/8 of the possible vote, then voting rights suspended for whole electoral district for 6 to 12 months	>>
April 1872	Wallon	Centre-droit	*excuses to the <i>juge de paix</i> of the canton * <u>progressive</u> fines 1/10 of personal tax, from 5 to 500 francs * <i>affichage</i> 1 month *suspension of suffrage + other political rights	-

			for 3 years	
April-May 1873	Pradié	Centre-droit	*fixed fines, equiv. to 10 days community service * also for local counsellors, delegates of professional groups, second-degree electors	-
Feb 1875	Leopold Limayrac	Centre-droit	*electors for Senate contests: fine of 100 francs	* Art. 18 of Election Law, 2 Aug 1875: excuses + substitution or 50 francs
Nov 1875 (?)	>>	>>	*voters: excuse or 3 to 50 francs	*rejected by Ricard commission (Centre- Gauche)
-----	-----	-----	-----	-----
July + Nov 1880	Bardoux	Centre-gauche [gov]	(*intro <i>scrutin de liste</i>) *suspension of political rights (<i>Laffitte</i>) for one or more elections, if repeated abstention	*supported by Gambetta and Assembly *defeated in Senate
May 1882	Laroche- Joubert	Appel au Peuple (Bonapartist)	*voluntary voter registration *fixed fine = 1/10 of tax for liquid assets paid prev. year, min.2 francs *no voting rights until payment of fine	*rejected by Cirier commission (Gauche Republicaine)
March 1885	Pieyre	Union des Droites	*voluntary voter registration *high fine, 3 to 10 times personal tax	*rejected by commission Desmons (Extreme Gauche)
Nov 1885	Laporte	Gauche radical [gov]	* <i>affichage</i> in small communities	
7 Feb 1889 + May 1893	Letellier	Union Republicaine Gauche radical	* <i>affichage</i> for 1 y (1 st) *5-15 francs (2 nd) *temporary strike-off	

		[gov]	from ERs (electoral rolls) for 1-2y (3 rd) *permanent strike-off from ERs (6 th) *also for deputies *obligatory voter registration	
11 Feb 1889	Delattre	Extreme gauche [gov]	* <i>affichage</i> (only)	
Jan 1894 + 26 June 1895	Gauthier de Clagny et al	Non inscrits (Boulangists)	* <i>affichage</i> →5 francs→ higher progressive fine (min. 25 francs) →2 y strike off →permanent strike-off *permanent voting cards + procedure for post-election complaints	*positive report by Gellibert de Seguin (Monarchist), June 1894
6 dec 1894	Louis	Doc.parl.1053	*obligatory voter registration	
April 1895	Guillemet	Gauche démocratique	* <i>affichage</i> → strike-off 1 y → strike-off 5 y →permanent strike-off + no candidate eligibility * <i>livrets de civisme</i> *also for deputies	*positive report by De Wignacourt (Republicain) + Commission d'initiative 11 June 1895 + parl. debate 13 June 1895
Nov 1895	Baudry d'Asson	Monarchist		
April 1900	Berry	Union des Droites	* <i>affichage</i> 1 y →5 francs →10 francs + 2 y strike-off →permanent strike-off + no candidate eligibility *exemptions for soldiers etc.	
June 1903 (+1906?)	Du Périer de Larsan	Republicain progressiste (Droit)	* <i>affichage</i> + ineligibility/ strike-off 1 y → strike-off 2 y → strike-off 4 y	

1908 + 1911	Failliot	Union Republicaine – Gauche Democratique (Centre-gauche)		
5 Nov. 1912 (Senat)	Louis Pauliat + Maxime Lecomte (vice-presid)	Extrême Gauche + Union Republicaine – Gauche Democratique		
1909 + 11 Jun 1914	Tournade	Republicain nationaliste (droit) [opp]		
9 Jun 1914	Berry + Driant	Non inscrit +Action Libérale (droit)		<i>Union sacrée</i>
22 Jul. 1919	Rouleaux- Dugage	Federation Republicaine (droit)	*tax reduction for voters	
7 Jun. 1921	Barthélemy + Baréty	GaucheRepDem [gov] + ActionRepSoc (centre-droit)	* <i>affichage</i> (3 months) *+ 5 francs *+ 5% of income tax *+ strike-off 5 y	
24 Mar. 1927	Victor Jean	Radical et radical- socialiste (gauche) [gov]	[Annex 4200]	
18 Jan. 1929 <i>See Giraud</i>	Camille Planche	Parti républicain socialiste et socialiste français (gauche) [opp]	[Annex 1106]	
10 Dec. 1931	Henri Labroue et al.	Gauche radical (centre-droit) [gov]		
21 Jun. 1932	Louis Marin et al.	Fédération républicaine (droit) [opp]		
8 Mar. 1929* 11 Jul. 1932 29 May 1934	Auguste Gratien	Republican, radical, radical- socialiste (centre- gauche) [opp/1932 gov]	*followed by exposé of Guy la Chambre to the Commission du suffrage universel 10 Apr. 1830 (see <i>Le Temps</i> 11 Apr. 1830)	
22 Jun. 1939	François,	Alliance des		

	Michel De Champeaux	républic de gauche et des radicaux indépend (centre-droit) [opp]		
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7 Jun. 1945	Joseph Denais	Parti républicain de la liberté (droit)		
3 Sep. 1946	Louis Marin	Republicains independents		

Annex 2. List of countries with a history of compulsory voting laws

COUNTRY	DATE ADOPTED (ABOLISHED)	CONSTITUTIONAL LAW (if available)	ELECTION LAW (if available)	SANCTIONS (if available)
Europe				
<i>Switzerland:</i> <i>Canton of Vaud</i> <i>Schaffhausen</i>	1924 (1948) 1852		Art.9-10	3 CFR
<i>France</i>	1875 (1951) *obligatory voter registration		Senate electors	<i>fine</i>
<i>Bulgaria</i>	1882		25 Aug. 1882	
<i>Russia</i>	1892		Municipality Law 11 Jun. 1892	
<i>Rumania</i>	?	§69 for Senate electors §108 for municipal elect.		
<i>Belgium</i>	1893	Art.62 (1894)	Art.207-210	25-125 EUR
<i>Spain</i>	1907 (?)		7 Aug. 1907	
<i>Greece</i>	1911	Art.51(5)	Art.6, 117 (1926)	1-12 months imprisonment+ deprivation of public offices +municipal positions
<i>Netherlands</i>	1917 (1970)	1917-1922	29 Nov. 1917	
<i>Luxembourg</i>	1924	-	Art.90	100-1000 EUR
<i>Denmark</i>	1920 (?)		11 Apr. 1920 for electors of Upper House – Landsting	

<i>Czechoslovakia</i>	<i>1920 (?)</i>		<i>29 Jan. 1920</i>	<i>1 month prison and loss of voting right</i>
<i>Hungary</i>	<i>[attempted 1904] 1922 (?)</i>		<i>3 Mar. 1922</i>	
<i>Germany</i>	<i>1922 elections for the House of Saxony</i>	<i>Art.125</i>		
<i>Austria</i>	<i>1929 (2004)</i>	<i>26§1=comp.voting declaration for Land elections §60= comp.voting for Federal Presidential elections</i>	<i>26 Mar. 1931</i>	
<i>Italy</i>	<i>[attempted 1901] 1948 (1993)</i>	<i>Art.48§2</i>	<i>Art. 4</i>	<i>light sanctions, e.g. certificate of citizenship</i>
<i>Cyprus</i>	<i>1979¹</i>	<i>-</i>	<i>Art. 7, 37</i>	<i>max.342 EUR</i>
<i>Turkey</i>	<i>1982?</i>			
<i>Asia</i>				
<i>Australia</i>	<i>1924</i>		<i>Art.128A (31 Jul. 1924)</i>	<i>≈10-25 EUR + criminal sanctions</i>
<i>Singapore</i>	<i>1958</i>			
<i>Nauru</i>	<i>1965</i>			

¹¹ Information based on private e-mail communication with Dr. Christophoros Christophorou, Assistant Professor of Communications, University of Nicosia, Cyprus, 4.6.2010

<i>Laos</i>	1989			
<i>Fiji</i>	1990	<i>yes</i>		
<i>Thailand</i>	1997	<i>yes</i>		
<i>LatinAmerica</i>				
<i>Mexico</i>	1857, rev.1917	<i>Art.36</i>		
<i>El Salvador</i>	1883	<i>Art.88</i>		
<i>Costa Rica</i>	1889			<i>no sanction</i>
<i>Nicaragua</i>	1893			
<i>Honduras</i>	1894			
<i>Panama</i>	1928?			
<i>Guatemala</i>	1965?			
<i>Dominican Republic</i>	1966?			
<i>Venezuela</i>	1891, rev. 1893 1958 (1993)	<i>Art.12</i> <i>Art.65</i>		
<i>Argentina</i>	1912		7 May 1912, <i>Art.83</i>	
<i>Uruguay</i>	1918			
<i>Chile</i>	1925			
<i>Ecuador</i>	1929			
<i>Bolivia</i>	1929			
<i>Peru</i>	1931			
<i>Brazil</i>	1932	<i>Art.47</i>		
<i>Paraguay</i>	1967?			
<i>Africa/Middle East 20th c.:</i>				
<i>DRC</i>	1960?			
<i>Egypt</i>	1956			

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