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Conducted by

Liam Murphy and Samuel Scheffler

Speaker: Cécile Fabre, Oxford

Paper: The Expressive Duty to Vote



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The Expressive Duty to Vote

Cécile Fabre*

Abstract

A well-known paradox, in the theory of voting, notes that each citizen is overwhelmingly unlikely to make a difference, via her vote, to the the winning outcome; moreover, voting is costly. Given that public governance is a non-excludable public good, an abstaining citizen will in any case enjoy its benefits. Under those conditions, it is irrational of her to vote. A standard response notes that citizens derive benefits from the act of voting itself - in particular, the benefit of expressing their views on the options on offer and of manifesting their political or social identity. Once we take into account the expressive value, to the individual voter, of voting, casting one's vote even though one knows that one is overwhelmingly likely not to make any difference at all to the outcome is not irrational after all.

In this paper, I deploy the expressive theory of voting in the service of an argument in favour of the moral duty to vote. I argue that individuals are under a general moral duty to express their commitment to justice and democracy; qua citizens, they are under a moral duty to do so by voting accordingly when called upon to do so, subject to certain conditions. Furthermore, even if as a result of those conditions not being met they are morally permitted not to vote, it does not follow that they are morally permitted to abstain: sometimes, casting a spoilt ballot is, on expressive grounds, the right thing to do. Once one frames the act of voting as a form of expression in general, and of counterspeech in particular, one can accept that citizens can be under a moral duty to vote (that is, to cast a valid vote), or to take part in the poll though spoiling their ballot, irrespective of whether or not their vote is decisive.

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I INTRODUCTION

The most common justifications for the moral duty to vote - by which I mean casting a valid ballot - in nation-wide elections or referenda appeal to citizens' general duty of reciprocity not to free ride on the provision of the public goods of democratic governance and its benefits, or to a general duty to bring about just outcomes and support democratic institutions.¹ Those arguments are vulnerable to a well-known difficulty. Each voter is overwhelmingly unlikely to make a difference, via her vote, to the the winning outcome; in any case, there are many other things which any individual voter can do, other than voting, to help bring about just outcomes and foster good governance. Under those circumstances, it is not clear why any single voter is under a duty to vote.²

¹ For defences of the reciprocity argument, see, e.g., A. Wertheimer, 'In Defence of Compulsory Voting', in *Participation in Politics - Nomos XVI*, ed. J. W. Chapman and J. R. Pennock (Lieber-Atherton, 1975); A. Lijphart, 'Unequal Participation: Democracy's Unresolved Dilemma', *The American Political Science Review* 91 (1997): 1–14, p.11; B. Engelen, 'Why Compulsory Voting Can Enhance Democracy', *Acta Politica* 42 (2007): 23–39, pp. 30-31; L. M. Umbers, 'Compulsory Voting: A Defence', *British Journal of Political Science* 50 (2020): 1307–1324. For defences of the justice argument, see J. Maskivker, *The Duty to Vote* (Oxford University Press, 2019). For earlier versions of the argument, notably in 19th century France, see A. Malkopoulou, *The History of Compulsory Voting in Europe - Democracy's Duty?* (Routledge, 2015), pp. 114–116.

There are other arguments for the duty to vote. For example, it is sometimes said that in so far as we have good moral reasons not to want it to be the case that everyone should abstain from voting, we ourselves ought to vote. For a comprehensive rebuttal, see L. E. Lomasky and G. Brennan, 'Is there a Duty to Vote?', *Social Philosophy & Policy* 17 (2000): 62–86, pp. 75-79. Other argue that the duty to vote is grounded in a role-based duty of civic virtue: see, e.g., L. Maring, 'Debate: Why Does the Excellent Citizen Vote?', *The Journal of Political Philosophy* 24 (2016): 245–257 and, for rebuttal, J. Brennan, *The Ethics of Voting* (Princeton University Press, 2011). More recently, Kevin Elliott has argued that the duty to vote is an institutional, role-based duty of citizenship to contribute to maximising the turnout, as a necessary condition for representatives to do their job well. (K. J. Elliott, 'An Institutional Duty to Vote: Applying Role Morality in Representative Democracy', *Political Theory* OnlineFirst (2023).) I am sympathetic to that claim - indeed, I defend an expressive variant of it. But I am not convinced by Elliott's account, not least because (as he acknowledges) it does not mandate citizens to vote well.

² In the empirical literature on electoral behavior, the claim that no voter is likely to make a decisive contribution to the winning outcome, coupled with the further claims that voting is costly (time, resources) and that voters are self-interested, generates the so-called paradox of voting: given that voters will benefit from the public good of democratic governance even if they do not vote, and that the costs of voting outweigh the size of their contribution to the winning outcome, it is irrational for them to vote. For seminal articulations of the problem in the study of voting behaviour, see, e.g., A. Downs, *An Economic Theory of Democracy* (Harper & Row, 1957); M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Harvard University Press, 1965). For a good review of subsequent empirical works, see A. A. Schuessler, *A Logic of Expressive Choice* (Princeton University Press, 2000), ch. 3. The most sophisticated set of arguments against the moral (and legal) duty to vote are Brennan, *The Ethics of Voting*; J. Brennan, 'Medicine Worse than the Disease? Against Compulsory Voting', in *Compulsory Voting*:

Supporters of the moral duty to vote counter that the likelihood of making a difference to the winning outcome is not as vanishingly small as critics suppose, and that even if it is, it does not undermine the duty.³ I am sympathetic to those responses. In fact, I shall avail myself of some of those moves later on. However, I offer an alternative defence of the duty: independently of whether their acts of voting are likely to make a difference to the winning outcomes, individuals are under a moral duty to express support for justice, and to do so via their vote, subject to certain conditions. Furthermore, even if as a result of those conditions not being met they are not under a duty to vote, it does not follow that they are morally permitted to abstain altogether: sometimes, casting a spoilt ballot is, on expressive grounds, the mandatory thing to do. (Whether they ought to be under a legal duty to vote is a separate question which I do not address here.)⁴

The paper proceeds as follows. Section II develops the expressive account of the duty in a simple case in which voters are faced with two options, one of which is basically just while the other is flagrantly unjust. Section III considers more complex cases. Section IV tackles some objections. Section V concludes by highlighting avenues for further inquiry.

For and Against, by J. Brennan and L. Hill (Cambridge University Press, 2014). But see also Lomasky and Brennan, 'Is there a Duty to Vote?'; A. Lever, 'Compulsory Voting: A Critical Perspective', *British Journal of Political Science* 40 (2010): 897–915; A. Lever and A. Volacu, 'Should Voting Be Compulsory? Democracy and the Ethics of Voting', in *The Routledge Handbook of Ethics and Public Policy*, ed. A. Lever and A. Poama (Routledge, 2019). For useful reviews of the debate, see S. Birch, *Full Participation: A Comparative Study of Compulsory Voting* (Manchester University Press, 2009), ch. 3; Malkopoulou, *The History of Compulsory Voting in Europe*, ch. 1; S. P. Singh, *Beyond Turnout: How Compulsory Voting Shapes Citizens and Political Parties* (Oxford University Press, 2021), ch. 1.

³ See, e.g., R. Tuck, *Free Riding* (2008), ch. 2; A. A. Guerrero, 'The Paradox of Voting and the Ethics of Political Representation', *Philosophy & Public Affairs* 38 (2010): 272–306; Z. Barnett, 'Why You Should Vote to Change the Outcome', *Philosophy & Public Affairs* 48 (2020): 422–446.

⁴ For early defences of the expressive response to the paradox of voting, see W. H. Riker and P. C. Ordeshook, 'A Theory of the Calculus of Voting', *The American Political Science Review* 62 (1968): 25–42; M. P. Fiorina, 'The Voting Decision: Instrumental and Expressive Aspects', *The Journal of Politics* 38 (1976): 390–413. See also G. Brennan and L. E. Lomasky, *Democracy and Decision* (Cambridge University Press, 1993); Schuessler, *A Logic of Expressive Choice*; D. F. Thompson, *Just Elections - Creating a Fair Electoral Process in the United States* (University of Chicago Press, 2002), pp. 22–24. For a useful typology of what we usually express by voting, see A. Hamlin and C. Jennings, 'Expressive Voting', in *Oxford Handbook of Public Choice*, ed. R. D. Congleton, B. Grofman and S. Voigt, vol. 1 (Oxford University Press, 2019). Interestingly, as Linda Eggert pointed out to me, the German translation for the noun 'vote' is *stimme*, which also means 'voice'. For scepticism, see, e.g., T. Christiano, 'Is Normative Rational Choice Theory Self - Defeating?', *Ethics* 115 (2004): 122–141, esp. pp. 137–139.

My expressivist account is the normative 'counterpart', as it were, of a standard response to the paradox of voting. The standard response accepts for the sake of argument that the probability of each vote being decisive is vanishingly small. But it notes that individuals do not vote only because they believe that their vote is likely to make a difference to the winning outcome: rather, they derive from the act of voting the benefit of manifesting their moral and political identity by expressing their views on the options on offer.

I rely on the following relatively uncontroversial conception of justice. Individuals owe it to one another to treat one another with equal concern and respect. In fulfilment of that ideal, they are under duties of justice to fellow human beings to (at the very least) guarantee them the basic freedoms and protections enshrined in the 1948 Universal Declaration of Human Rights. Those protections include protection from arbitrary discrimination and help with meeting basic needs for housing, minimum levels of education, income and health care. Policies which fail to secure those freedoms and meet those needs violate the demands of basic justice: they are (as I shall put it) flagrantly unjust. Demanding as duties of justice may be, however, individuals may not reasonably be expected to sacrifice for the sake of others those of their (independently morally justified) goals, projects and attachments which are central to their well-being: duties of justice are subject to a no-undue costs proviso.

The foregoing remarks imply that individuals are under a duty to set up and maintain institutions, and to adopt policies, which best fulfill the demands of basic justice. Now, they are likely to disagree with one another about three things: (a) whether they do have those rights in the first instance; (b) if they do, how best to specify those rights and implement them; (c) what policies to implement above and beyond the demands of basic justice. Those disagreements must be settled through procedures and institutions which accord with the requirement of equal concern and respect, and which confer on public officials the legitimate authority to implement the resulting outcomes.

I take it for granted that democratic procedures and institutions alone fit this particular bill: they are more likely than undemocratic regimes to secure individuals' basic rights; and they alone provide citizens with an equal opportunity decisively to take part in and shape the political decisions which will resolve their disagreements. This supposes that electoral procedures meet the following conditions for electoral integrity: all eligible voters are given a meaningful opportunity to vote through transparent and fair mechanisms for voter registration and regular polls; turn-out numbers are made public; votes are counted according to fair and publicised procedures; the outcome of the process is made public, in full (votes for and against, and spoilt ballots), and in good time; electoral fraud is negligible and appropriately punished; there is a roughly level playing field, notably during electoral campaigns, between the ruling parties and the opposition. I shall assume, finally, that democratic procedures grant public officials the legitimate authority to issue and enforce the relevant laws and directives, so long as the resulting decisions do not violate the basic rights of those who are subject to them.⁵

⁵ I draw on the following accounts of democracy, *modulo* disagreements which are irrelevant to my concern in this paper: T. Christiano, *The Constitution of Equality - Democratic Authority and its Limits* (Oxford University Press, 2008), esp. ch.3; D. Estlund, *Democratic Authority - A Philosophical Framework* (Princeton University Press, 2008), esp. ch. VI; N. Kolodny, 'Rule Over None I: What Justifies Democracy?', *Philosophy & Public Affairs* 42 (2014): 195–229; N. Kolodny, 'Rule Over None II: Social Equality and

One final *caveat*. The expressive duty to vote is a *pro tanto* duty, and is subject to a no-undue cost proviso. I do not offer an account of the proviso. In particular, I do not take a stand on the vexed question of whether the maximum costs which agents may reasonably be expected to bear for the sake of one another are indexed to (e.g.) the magnitude of their contribution and the likelihood that they will succeed at bringing about just outcomes, or whether they are fixed. The question arises for duty to help in general - not merely for the duty to vote - and doing it justice is beyond the scope of the paper.⁶

II FIRST CUT: BINARY CHOICES

To vote is (in part) to express a view. This simple point partly explains why people vote even if they know that they are unlikely to affect the winning outcome, but it is purely descriptive. It tells us why a Neo-Nazi and a committed egalitarian bother to cast a ballot in favour of candidates and policies which, let us assume, have no chance whatsoever of winning. However, it does not show that they are under a duty to vote in general, let alone in the ways that they do.

Although the expressive account of voting behaviour is normatively inert, its foremost proponents, Geoffrey Brennan and Loren Lomasky, at one stage endorsed the duty to vote on expressive grounds:

What is wrong with abstention does not need to be tied to any effect on outcomes: The wrong inheres in the apathy thereby displayed. In great national elections or referenda, principles of undeniable moral salience are at stake...But the individual who declines to get involved, who is so unmoved by the debate before her that she will not give up a few minutes of her time to register her views in the electoral precincts provided for that purpose can present the appearance of a political neuter. She is too diffident or too detached from events of great moment to bestir herself. In showing herself unmoved by that to which her fellow citizens assign considerable weight, she displays an insensitivity for which they can reasonably take her to task.⁷

the Justification of Democracy', *Philosophy & Public Affairs* 42 (2014): 287–336; D. Viehoff, 'Democratic Equality and Political Authority', *Philosophy & Public Affairs* 42 (2014): 337–375; D. Viehoff, 'Serving the Governed', *Proceedings of the Aristotelian Society* CXVII (2017); S. V. Shiffrin, *Democratic Law - The Berkeley Tanner Lectures*, ed. H. Ginsborg (Oxford University Press, 2021). One such disagreement revolves around the concepts of and relationship between legitimacy and authority. Another revolves around the complex issue of whether democracy only has intrinsic value (as the instantiation of the principle of fundamental equality), or only has instrumental value (dependent on its realising justice), or both. I take it for granted it is both. I also take it for granted that there is more to democracy than electoral procedures.

⁶ Thanks to Patrick Tomlin for pushing me on this.

⁷ Brennan and Lomasky, *Democracy and Decision*, p. 188. In a latter article, they resile from that position

Brennan and Lomasky do not develop their argument any further. However, they are on the right track. In this section, I argue that individuals are under a moral duty to express their commitment to justice in general (s.II.1), and via their vote in particular (s.II.2). Throughout, I assume that voters have to choose between a flagrantly unjust option and a basically just option, and that they only have an infinitesimal chance of making a difference to the winning outcome: the expressive argument for the duty to vote is a genuine alternative to its rivals only if it can establish that voters are under a duty to express their commitment to justice by voting, irrespective of the causal contribution which their vote makes to the implementation of just policies.

II.1

Suppose that James belongs to an ethnic minority. His right-door neighbour Rob is a racist, votes for the British National Party and displays BNP stickers on his front room window. His left-door neighbour Leo abhors racism and has an anti-racist sticker at hand. There is a risk that Rob will act on his racist beliefs and attack James, or that his display of racist enmity will incite local far-right gangs to do so; however, there is also a very strong chance that they will desist if Leo is seen to support James. Leo is under a duty to display his sticker: his expressive duty is grounded in a more general duty of Good Samaritanism to protect others from harm.⁸

Next, imagine that Leo and James know for sure that James will come to no physical harm as a result of Rob's display of racism, even if Leo does nothing. Even so, Rob compounds the wrongdoing of having racist beliefs with the wrongdoing of expressing those beliefs. The harm which racist speech occasions is not merely physical or material (in so far as such speech incites others to violence, or as it subjects its targets to the attritional costs of constantly fearing hostile interactions): it is an *expressive* harm, to wit, the harm one does to someone when one manifests certain negative attitudes towards them - in this example, an attitude reflective of the fact that one deems them unworthy of the respect one owes to moral and rational agents. While it may be permissible under some circumstances expressively to harm someone (think, for example, of the harm inflicted on a rightfully convicted criminal by the imposition of an expressive form of punishment), it is never permissible to express the view, in words or deeds, that someone is not worthy of

on the grounds that voters as a matter of fact do not express very much, or at least cannot be presumed to express very much, when they vote. (Lomasky and Brennan, 'Is there a Duty to Vote?') However, even if voters are as indifferent to, or as sporadically engaged with, politics as Brennan and Lomasky aver, it is open to proponents of the expressive account to rejoin that they are under a moral duty to express their views. That, in fact, is precisely my point in the remainder of the paper.

⁸ See, e.g., J. W. Howard, 'Terror, Hate and the Demands of Counter-Speech', *British Journal of Political Science* 51 (2021): 924–939.

respect in that sense.

The duty to protect is usually construed and defended as a duty to take material steps so as to thwart or mitigate the imposition of unwarranted physical or material harm (be it deliberate or collateral). There is no reason so to restrict its scope. If, as I averred above, Leo is under a duty to thwart or mitigate the material harms of hate speech via expressive means, then he is also under a duty to thwart or mitigate its expressive harms by communicating to its victims that he has no truck with racists.⁹

The point holds even if Leo will not succeed at getting Rob to remove his sticker, indeed even if there is nothing Leo or anyone else can say that will induce Rob to stop attempting to inflict on James the ongoing material and expressive harms of racism. James has an interest in knowing that he does not stand alone in the face of racism, which is weighty enough to warrant promoting. I take it as uncontroversial that Leo is under a duty to James to leave his own sticker up, thereby communicating to James that there is at least one person who does not share Rob's racist views. While this may not stop Rob, it might help mitigate the harms he inflicts. (I say 'might': I return to the issue of lack of uptake in s.II.2.)

The claim that Leo is under an expressive duty to victims of Rob's openly racist beliefs to manifest his solidarity with them even if this makes no difference to Rob's and other racists' conduct readily extends to opposition to flagrantly unjust laws. Suppose that members of ethnic minorities are routinely subjected to various forms of discrimination rooted in racist prejudices and that the law explicitly permits it. Or suppose that millions of households face severe destitution as a result of distributive policies to which the law give legal force. Those laws do not merely have the effect of depriving some individuals of a range of freedoms and resources: they also express the view that some of those who are subject to the state's jurisdiction do not have equal moral standing and that one may treat one another or a subset of fellow human beings in ways which manifest a denial of equal respect. That alone is severe enough an expressive harm. Worse still, those laws also express the view that it is legitimate to deploy the state's coercive power to those ends, such that all individuals subject to the state's jurisdiction are under a duty to obey. If I am in a position to manifest my solidarity with the victims of those laws, thereby mitigating the

⁹ See, e.g., M. Lepoutre, *Democratic Speech in Divided Times* (Oxford University Press, 2021), ch. 3; C. Fumagalli, 'Counterspeech and Ordinary Citizens: How? When?', *Political Theory* 49 (2021): 1021–1047; B. Cepollaro, M. Lepoutre and R. M. Simpson, 'Counterspeech', *Philosophy Compass* 18 (2023). For a seminal account of expressive harm and of the importance of assurance, see J. Waldron, *The Harm in Hate Speech* (Harvard University Press, 2012), esp. chs. 4–5. There are non-expressive ways of mitigating expressive harms: suppose that Rob is launching into a loud racist tirade while standing outside James' house. Leo can block the sound of his voice by playing music very loudly. He is under a duty to do so. Note: by expressive duty, then, I mean a duty to counter or mitigate by expressive means the infliction of wrongful material or expressive harm.

wrongful material and expressive harms which they suffer, I am under an expressive duty to do so.¹⁰

II.2

To say that individuals are under an expressive duty to manifest solidarity with the victims of flagrantly unjust laws is one thing. It is another to say that they are under a duty to do so by voting. After all, as some critics of the duty to vote observe, voters can bring about, or manifest their commitment to, justice in ways other than voting, including expressive ways such as taking part in demonstrations or giving money to political parties; it is not clear therefore why they are under a duty to vote.¹¹ I return to the problem of abstention below. In this sub-section, I mount a preliminary defence of the view that the role of being a voter carries with it an expressive duty to vote.

The claim that an agent can have expressive duties by dint of a role which she occupies and not, or not merely, *qua* moral agent, is not particularly controversial. A judge *qua* judge is under a duty to issue a verdict in her written opinion about the case under her consideration. An examiner whose task is to evaluate candidates for the Civil Service is under a duty *qua* examiner to express her beliefs about the merits and demerits of the candidates whose files she is tasked to evaluate. In both cases, the agent's failure to fulfil her

¹⁰ On the subordinating expressive force of the law, see R. Langton, 'Speech Acts and Unspeakable Acts', *Philosophy & Public Affairs* 22 (1993): 293–330, esp. pp. 302–303. On the expressive force of the law in general, see E. S. Anderson and R. H. Pildes, 'Expressive Theories of Law: A General Restatement', *University of Pennsylvania Law Review* 148 (2000): 1503–1575. For a sceptical take, see M. D. Adler, 'Expressive Theories of Law: A Sceptical Overview', *University of Pennsylvania Law Review* 148 (2000): 1363–1501.

It has been objected to me that, in stable, robust liberal democracies, voters are not routinely faced with binary choices between just and flagrantly unjust options: rather, they have to choose between political parties which, in the main, largely agree on what basic justice requires, and whose disagreements as to how best to satisfy its demands are not particularly acute. Accordingly, my expressive case in this and the next subsection is largely moot.

I am not convinced by this diagnosis. Western democracies are characterised by growing basic injustices. Witness for example the rise of poverty and concomitant malnutrition in children in particular, the rise in homelessness but also the rise of openly xenophobic rhetoric around asylum seekers and refugees and recurrent attempts in some countries to further tighten immigration laws. In France, the choice voters faced in 2022 between Marine Le Pen and even the relatively right-wing Emmanuel Macron was a meaningful choice, across a range of policy areas - as was the choice they faced, between the far-right and centrist and left-wing parties in the legislative elections of June 2024. So was the choice faced by Polish voters in Poland's general elections of 2023. In any case, I address less 'acute' cases in s.III.1.

¹¹ See, e.g., Brennan, *The Ethics of Voting*, chs. 1–2; C. Freiman, *Why It's OK to Ignore Politics* (Routledge, 2021); and, for an especially good defence of that view, B. Brown, 'Beyond the Voting Debate', in *Oxford Studies in Political Philosophy*, ed. D. Sobel and S. Wall, vol. 9 (Oxford University Press, 2023).

role-based expressive duty is a moral failure. The judge wrongs defendants and plaintiffs, who have a fundamental interest in having their case decided, as well as those who are subject to the state's jurisdiction and who have a fundamental interest in the robustness of the justice system. The examiner wrongs the applicants, who have a legitimate interest in their candidacy being properly assessed, as well as those whose quality of life partly depends on the quality of the Civil Service.

Compare with voting. To have the right to vote is to occupy a particular role in the complex set of decision-making procedures whose function is, *inter alia*, to settle political disagreements. It has an inherently expressive dimension. Elections and referenda are about the laws of the land, which are devised, passed and enacted by democratically elected legislators and holders of executive office on behalf of voters, and to which voters and non-voters (including non-citizens) alike are subject: what they ought to be, who shall be empowered to make and enforce them, and so on. Not only do they make a material difference to people's lives; they also have expressive force. In elections and referenda, voters express their beliefs about what, *on behalf of the entire polity*, legislators and the government ought to do; through their vote, they seek to bring about or maintain laws, again on behalf of the entire polity. The reason they can claim to do so is that they ultimately have the right to shape, and share responsibility, for those laws.

Suppose, then, that the election, or referendum, pits a flagrantly unjust outcome against a basically just one. It behoves voters, *qua* voters and not merely *qua* moral agents, to take expressive measures in the face of flagrantly unjust laws, or flagrantly unjust applications of the law. Consider the protests held in the United Kingdom following George Floyd's murder at the hands of Minneapolis police officers in 2020. The protesters were not merely expressing their anger at endemic racism in the United States: they were condemning racism *in their own country*. Or consider the campaign *Not in My Name*, organised by the Indian film-maker Saba Dewan in protest against mob violence directed at Muslims and Dalits, and against the government's failure to act. The campaign successfully called for demonstrations throughout the country. Many of those protesters were citizens of and had the right to vote in, respectively, the UK and India. Their anger and, more broadly, their expression of commitment to racial justice were in part driven by their political status: many construed their actions, rightly, as an expressive duty to protest as grounded in, but not wholly co-extensive with their duty to protest *qua* moral agents.

To protest is not enough, however. Voting has a particular kind of force which protests lack. When a voter - call her Mary - casts a ballot paper in favour of policy *P* in a referendum or tick the name of candidate's *A* in a general election, she does two things. She ranks the options on offer (*P* is better than *Q*; *A* is better than *B*); and she mandates the implementation of *P* via the necessary legislative mechanisms, or *A*'s election to the presidency or legislature. Moreover, again subject to certain conditions, she expresses her support for electoral procedures as a way authoritatively to settle political disagreements. In the language of J.L. Austin's theory of speech acts, her vote has *verdictive* and *exercitive* illocutionary force. The perlocutionary force of her act of voting lies in its being taken

and counted as a vote, and in its making it the case that, if so stipulated by the electoral procedure, *P* or *A* is declared the winner, *P* is implemented, *A* takes office, and so on. Finally, her vote has perlocutionary force in so far as she successfully communicates to third parties that she is expressing those things.¹²

Elections explicitly call upon voters to express their commitment by voting.¹³ In so far as voting has the illocutionary force of a verdict on the options on offer, it is similar to shouting slogans when taking part in a demonstration or to sticking a political sticker on one's car bumper. In addition and unlike those other forms of political expression, it manifests a willingness to deploy the deployment of the coercive apparatus of the state to the stated ends. Suppose that voters are faced with a choice between two options, one of which does not violate the demands of basic justice while the other one does. There is a risk that some of our fellow voters are not committed to justice, to the point where they will, by dint of *their* vote, be interpreted by victims of their preferred policies as well as other voters, their representatives and holders of executive office as expressing their determination to have the law implement those policies. Under those circumstances, manifesting one's commitment to justice by demonstrating, sticking political stickers on one's car, engaging in heated debates around the dinner table, indeed working to bolster democratic procedures so that they deliver authoritative outcomes (for example, by volunteering to tally votes on polling night) is not enough: we are under a duty to counter electoral fire with fire.

In that respect, I am very sympathetic to Corrado Fumagalli's defence of voting as counter-speech.¹⁴ However, my account is broader than his. He construes the expressive duty to vote as a way to counteract representatives' hateful claims during the campaign. I construe it as a way to manifest solidarity with the targets of flagrantly unjust laws and policies in general, and thereby to mitigate the wrongful material and expressive harms

¹² J. L. Austin, *How To Do Things With Words*, 2nd ed. / edited by J.O. Urmson and Marina Sbisa. (Clarendon Press, 1975), and p. 151 on voting as a speech act. Analyses of voting as a speech act are not as common as we might think but see D. Wodak, 'The Expressive Case against Plurality Rule', *The Journal of Political Philosophy* 27 (2019): 363–387, pp. 78–80; C. Fumagalli, 'The Place of Voting in the Ethics of Counterspeech', *Ethical Theory and Moral Practice* 26 (2023): 595–609, pp. 12–13. I consider cases in which I may not be aptly construed as expressing such support in s.III.2.

¹³ See also E. B. Chapman, 'The Distinctive Value of Elections and the Case for Compulsory Voting', *American Journal of Political Science* 63 (2019): 101–112, p. 13; Guerrero, 'The Paradox of Voting and the Ethics of Political Representation', p. 276. In her piece, Chapman defends the duty to vote by appealing to one of the core features of popular voting, namely the expectation of near universal participation. (See also her book-length defence of the duty to vote, in E. B. Chapman, *Election Day - How We Vote and What It Means for Democracy* (Princeton University Press, 2022), esp. pp. 89–90.) I worry that her argument is circular. If I say to you that I expect you to φ and *if my expectation is legitimate*, you are under a duty to φ . But whether my expectation is legitimate is precisely what needs to be shown.

¹⁴ Fumagalli, 'The Place of Voting in the Ethics of Counterspeech', esp. pp. 3–5.

they incur. It holds for choices between, for example, a flagrantly unjust distributive policy such as reducing the very wealthy's tax burden while slashing public expenditure on welfare services, with catastrophic consequences for the badly off, vs. increasing public funding for education and health care in deprived areas. Moreover, on my account, the duty to vote is a duty to express one's opposition to the expressively and materially harmful policies and laws endorsed by one's fellow voters, not just by putative and incumbent representatives and not merely as evidenced in in political manifestos and campaign statements but, crucially, by *votes*.

It is possible of course that some people will fail to interpret those votes as the fulfilment of the expressive duty to manifest solidarity. All that we have is a certain number of 'yeses' or 'nos', or of ballot papers bearing a name or a policy: we have no idea of whether voters really meant to vote for, say, *P*, and if so whether they did so as a means to express such support, and even whether they take themselves, through their vote, to support democratic procedures. We can put the worry in Austinian terms. Even if an act of voting has the illocutionary force of expressing solidarity, it also matters that it should have the perlocutionary force of communicating to the victims of those harms that they do not stand alone. In large scale polls, no such assurance can be provided.

And yet, even if Mary does not in fact support *P* and is not in fact willing to authorise it, by knowingly casting a valid ballot paper for *P* under the conditions set out by the electoral procedure in place, her act of voting is expressive of those attitudes nevertheless - inaccurately so for sure, but no less expressive for that. Moreover, third parties may reasonably infer from her voting for *P* that she in fact supports *P*, and that she is in fact willing to authorise it. The general point is this: someone can express a particular attitude α , and can be construed as such, even if she does not in fact have α ; and one can at least sometimes infer from the fact that she is expressing α that she does have α . This partly explains why electoral integrity matters: it helps ensure that voters can express their views, and thus provides grounds for inferring from the fact that they vote for *P* rather than *Q* that they support *P* over *Q*, and that are willing to authorise it; it also provides grounds for inferring from the fact that they vote *simpliciter* that they support democratic procedures in principle and the outcome of this particular process in particular.¹⁵

¹⁵ It thus counts in favour of a particular electoral system over another that it better enables voters to express their preferences via their vote, such that the overall result in the aggregate (both the number of votes for the winning outcome and the number of votes against it) better reflects those preferences. For the view that expressive considerations give reasons to endorse preferential voting such as single-transferable vote over plurality vote, see Wodak, 'The Expressive Case against Plurality Rule'. On the expressive power of different voting rules in general, see also S. Bourgeois-Gironde and J. V. Ferreira, 'The expressive power of voting rules', *Social Choice and Welfare* (early online version) (2023).

The difficulty under consideration here arises in other cases, notably with the case of insincere promises. See Austin, *How To Do Things With Words*, p. 11; J. Searle, *Speech Acts: An Essay in the Philosophy of*

If this is correct, in order to interpret the expressive force of an electoral outcome, we simply need to know how many voters cast which ballot papers, what evidence there is to suggest that casting this or that ballot paper does or does not mean just what the paper actually says, and how voting itself is generally construed in public discourse (irrespective of how it *ought* to be construed.). We do not need to know, of each and every single voter, how she voted and why. This helps solve some difficulties raised by the fact that individual acts of voting contribute to a collective expressive act, which makes it all the harder to ascertain what each voter meant to say (particularly in nation-wide polls).¹⁶ Many of those who voted in favour of Brexit did so because they wanted to leave the EU. However, many were also expressing a commitment to (e.g.) curtailing immigration in general; a commitment to restoring Britain's rightful status as a major world power; and anger at worsening living conditions and at Westminster elite's indifference to their plight. It was not clear at the time, and it is still not clear now, whether those voters had given much thought as to whether leaving the EU was a solution to those ills. Nevertheless, the fact remains that casting a 'yes' vote in the Brexit referendum was framed during the campaign as the expression of a preference for leaving the EU and that, irrespective of the intentions and beliefs of each of those voters, the aggregation of those votes did mean that a majority of those who voted could be taken to have ranked Leave as preferable to Remain, and to have expressed their willingness to authorize the government to take the required steps. Under conditions of electoral integrity, we can tolerate some degree of uncertainty about each voter's beliefs and intentions when interpreting the overall result in the aggregate.¹⁷

Under stipulated conditions, then, voting can communicate solidarity to victims of injustice. But suppose for the sake of argument that it does not have the requisite perlocutionary force. It does not follow that individuals are not under an expressive duty to vote.

Language (Cambridge University Press, 1969), p. 62. It has been objected to me that expressing an attitude α must go hand in hand with having α . But this implies, counter-intuitively, that an actor who plays Othello yet does not himself have the attitude of jealousy is not expressing jealousy. This seems counter-intuitive to me (though not all practitioners and philosophers of dramatic performance would agree.) Conversely, a theatre-goer who, in so far as she knows she is going to the theatre to watch a production of *Othello* also knows that she is watching an actor performing the eponymous role, may not infer from the actor's display of jealousy that he is jealous.

¹⁶ On voting as a collective speech act, see K. Ludwig, 'What Are Group Speech Acts?', *Language & Communication* 70 (2020): 46–58, pp. 47–50; M. Hancher, 'The classification of cooperative illocutionary acts', *Language in Society* 8 (1979): 1–14, p. 12; J. Hughes, 'Group Speech Acts', *Linguistics and Philosophy* 7 (1984): 379–395, p. 386.

¹⁷ If a non-trivial number of citizens no longer believed that electoral integrity matters, indeed no longer respected the outcome of democratic procedures, we would no longer be in a stable, robust liberal democracy, and my arguments in this paper would not apply - at any rate, would likely require substantial revisions.

Generally, the claim that I am unlikely to succeed at φ -ing does not entail that I am not under a duty to try to φ . Return to the racism case. Suppose that Leo knows that putting up an anti-racism sticker on his front window is unlikely to succeed at communicating to James that he does not stand alone: for James believes that, deep down, everyone is a racist. Leo's utterance (broadly construed) is unlikely to have the requisite perlocutionary force. Nevertheless, he is under a duty to express his solidarity, as a means to attempt to communicate it to James. He cannot be certain that his expressive act will misfire: it is better to err on the side of being correctly construed by the intended beneficiaries of one's vote as acting out of concern for them than as being indifferent to their plight.

III SECOND CUT: COMPLICATIONS

I have assumed so far that voters are faced with a two-option choice involving a basically just option and a flagrantly unjust option. In this section, I examine more complex scenarios.

III.1

The claim that I am under an expressive duty to manifest my opposition to flagrant injustice and my solidarity with its victims by explicitly affirming the opposite view is (I hope) uncontroversial. Suppose however that the choice which my fellow voters and I face does not pertain to what basic justice demands: we agree, as do the political parties in competition, that it demands the eradication of severe poverty, that it is incompatible with a racist immigration regime, and so on. Rather, we have to choose between different proposals for bringing about basic justice. For example, we have to choose between electing a political party whose key manifesto commitment is to set up an unconditional basic income, or a political party which seeks to improve welfare services in some other way; or we have to choose from a range of restrictions on immigration none of which are rooted in prejudicial beliefs about foreigners. In such cases, the question is not whether we are under an expressive duty to manifest a commitment to justice by expressing solidarity with victims of injustice: rather, it is whether we are under an expressive duty to rank our preference as between those options and to authorise officials to implement that preference. *Ex hypothesi*, neither of those options inflicts severe material or expressive harm on the losing party. Accordingly, the justification for the expressive duty to vote in the stark cases, which draws on a general duty to manifest solidarity to victims of flagrantly unjust choices, does not seem apposite here.

We need to distinguish between, roughly, two kinds of voters faced with this scenario. First, a voter may be genuinely unsure of which of those policies is all things considered the best one at the bar of justice. Second, a voter may simply not care very much at all about which of those options to support, though she would be able to form a considered

judgement about what to do if she could be bothered. The first displays epistemic humility; the second, political indifference. I am inclined to think that both can in some cases be held under an expressive duty to cast a ballot for one of the options on offer. Here is why. There is more to supporting justice than manifesting solidarity with victims of injustice. Supporting justice also involves communicating that it matters *that* a reasonable disagreement as to how best to satisfy the demands of basic justice be resolved authoritatively. That, in turn, involves communicating one's support for the institutions which are best placed authoritatively to solve reasonable disagreements about justice and instantiate individuals' fundamental duty of justice to treat each other with equal concern and respect. Someone who refuses to vote risks giving the impression that she is not sufficiently committed to any of the options on offer to be bothered explicitly to rank those options and to take them seriously enough as appropriate matter for the coercive deployment of the state apparatus. In the case of the indifferent voter, her silence would be read accurately; in the case of the epistemically humble voter, it would not. The former's stand is morally objectionable; the latter's position is not, yet I am inclined to think that she ought not to take that risk.¹⁸

If abstention is not a morally acceptable option, what, then, must those two voters do? The indifferent voter clearly is under a duty to reach a judgement on the options on offer, and to vote accordingly. The epistemically humble voter is in a somewhat different situation. If she abstains, she fails to express support for democratic institutions. It seems that she must cast a valid vote - and yet, she cannot decide. Depending on the facts of the case, she might be permitted her to choose by selecting her option at random; or, we might think that if the incumbent party has been in power for a long time, she ought to vote for the alternative. If longevity in government makes for complacency, increases vulnerability to corruption and leads to a deterioration in the quality of government, thereby posing a risk to democratic institutions' ability to deliver basic justice, expressing support for the latter might require expressing support for the opposition even if the latter has no chance of winning.¹⁹

Under those circumstances, the epistemically humble voter is under the stated duty even if there are institutional mechanisms for differentiating her from abstaining voters - even if, for example, it is possible for her to spoil her ballot and have it counted as such. Suppose next, however, that there are no good grounds for booting out the incumbent party, and suppose also for the sake of argument that voters generally ought not decide at random what to vote for, even in the case under consideration here. If she can mean-

¹⁸ Seanna Shiffrin develops a communicative account of democracy along those lines, though she defends democratic participation in general whereas I focus on the duty to vote. (Shiffrin, *Democratic Law*, especially ch.1.)

¹⁹ Thanks to David Miller for the suggestion.

ingly take part in the poll without endorsing either *P* or *Q*, she is under a duty to do so: someone who has to choose between two options both of which pass the ‘basic justice threshold’, and who refuses to choose still manifests a commitment to democratic institutions as the only mechanisms for resolving reasonable disagreement between individuals willing to treat one another as one another’s moral equals, and a commitment to authorizing the implementation and enforcement of whichever outcome wins.²⁰

III.2

Suppose next that the choice is between two equally flagrantly unjust options either one of which would, if successful, remain or become enshrined in law. *Ex hypothesi*, voters cannot vote as a way to manifest their solidarity with victims of injustice: whatever they vote for, moreover, impairs the legitimacy of public officials’ decisions in respect of outcomes. Under those circumstances, they are not under a duty to vote. The question, then, is whether they are nevertheless morally *permitted* to vote for either one of those options on expressive grounds, and, if not, whether they are under a duty to spoil their ballot or, more stringently still, to abstain.

Recall that under conditions of electoral integrity, a voter who votes for *P* expresses her ranking of *P* relative to alternatives, as well as her willingness to authorise officials to implement whichever option wins. In this case, she may not do so, on pain of failing to provide the requisite assurance to victims of injustice. At first sight, it might seem that she is not under a duty to take part in the poll and spoil her ballot either - indeed, that she is under a duty to abstain. True, in cases involving reasonable disagreements between non-flagrantly unjust options, a voter who is given a meaningful opportunity to take part in the poll yet without having to choose between those options can under some conditions be held under an expressive duty to do so, instead of abstaining: casting such a ballot is, and can be appropriately taken as, an expression of support for democratic institutions *in principle* and a willingness to regard the outcome, whatever it is, as authoritative. However, the scenario under consideration here is different in the following way: it raises the harder question of whether she can also be interpreted to express her willingness to regard the winning outcome as authoritative. *If* it can, then it seems that she is not under an expressive duty to take part in the poll. For in so doing she would express, and would be construed to have expressed, support for democratic procedures as a way authoritatively to solve disagreements between citizens, and, by implication, willingness to authorise the outcome of those procedures - in this case, to either one of two equally flagrantly unjust options. This is not something one could be held under a duty to do: individuals gener-

²⁰ At least so long as she does not spoil her ballot by writing anti-democratic slogans on it. Thanks to Jonathan Seglow for the suggestion.

ally are not under a duty to undertake to do wrong, and to manifest their willingness to do so, unless as a means to avert the lesser of two evils - an option which, in this case, is not available to them *ex hypothesi*. Indeed, it might even be argued that individuals are under a (*pro tanto*) duty not to so - in other words, a duty to abstain.

I believe that this is too quick. Someone who is faced with flagrantly unjust options and who casts a spoilt ballot can at best be taken to express her commitment to democratic procedures *in principle*: she cannot reasonably be taken to express, *via that vote*, her willingness to authorise the winning outcome. Here is why. We owe it to one another to treat one another with the respect owed to moral and rational agents, endowed with the capacity to judge and differentiate between right and wrong. This implies that we may not subject others to hard treatment if we lack reasons to believe that they have done something to warrant it, and, *a fortiori*, if we have evidence to believe that they have not acted so as to warrant it. Hard treatment can take many forms, including the form of suspecting someone of grievous wrongdoing - here, the wrongdoing of supporting flagrantly unjust outcomes to the point where one is willing to authorise their coercively directed implementation. Someone who spoils her ballot provides evidence that she is not willing explicitly to support such outcomes, and we are not licenced to assume otherwise.²¹

In cases such as these, voters are under an expressive duty to participate in the poll. Democracy, imperfect though it is, is the only regime which enables voters to settle their disagreements authoritatively on a footing of moral and political equality. When it is possible to manifest one's support for it, in principle and under conditions of electoral integrity, by taking part in its core mechanism without at the same time incurring the cost of appearing to manifest support for a grievously unjust option, one ought to do so.²²

III.3

Suppose now that voters face a choice between two flagrantly unjust options, one of which ($O_{U^{**}}$) is more unjust than the other (O_{U^*}). Some who defend the duty to vote on grounds of causal contributions to justice argue that agents generally are under a moral duty to dirty

²¹ I develop the claim that we owe it to another not to subject one another to doxastic hard treatment without warrant in C. Fabre, 'Doxastic wrongs, non-spurious generalisations and particularised beliefs', *Proceedings of the Aristotelian Society* 122 (2022): 47–69, s. IV. For defences of the notion of doxastic wrongs, see M. Schroeder, 'When Beliefs Wrong', *Philosophical Topics* 46 (2018): 115–128; R. Basu, 'Can Beliefs Wrong?', *Philosophical Topics* 46 (2018): 1–17.

²² The claim that voters are under a duty to cast a spoilt ballot when faced with two equally unjust options is compatible with the view that they are morally permitted to engage in acts of civil disobedience against the winning outcome. I am grateful to Kerstin Reibold helping me think through some of the connections between my defence of the duty to vote and the problem of civil disobedience - though I cannot do justice to this hugely complex issue here.

their hands in favour of the lesser of two wrongs, and that voters therefore are under a duty to vote for O_U .²³

Here is a sceptical response to the dirty-hands argument. There are limits to the costs which individuals may reasonably be expected to incur for the sake of others. Those costs are usually construed in material or physical terms: I am morally permitted not to sacrifice life and limbs to rescue someone from a lethal threat, and not to render myself or my children destitute as a means to ensure that my neighbour escapes destitution. Yet there can also be *moral* costs to helping others, to wit, the moral costs attendant on inflicting a serious harm on innocent third parties: even if the infliction of such harm is all things considered morally justified, it is a moral stain. To hold someone under a duty to contribute to those acts, thereby carrying the stain, might in some cases be unacceptably costly to her moral integrity.

Although this line of argument is usually deployed to justify refraining from doing something - paradigmatically, serving in the army if one is a pacifist, donating one's blood if one is a Jehovah's Witness, etc. - it can be adapted to expressive contexts. A voter committed to justice might thus object that to hold her under a duty to manifest her willingness to authorise officials to carry out the least unjust of the two options is unduly costly to her moral integrity.

I agree that a plausible account of the no-undue costs proviso must take moral costs into account. However, this response is implausibly permissive. *Ex hypothesi*, some individuals are exposed during the campaign and in the aftermath of the poll to the serious expressive harm of it being deemed appropriate, and explicitly so, by non-trivial numbers of voters that the coercive power of the state should be deployed to bring about unjust outcomes. Moreover, of those individuals some will suffer a worse expressive harm than others. To refuse to vote even though one might thereby mitigate expressive harm by manifesting one's solidarity with its victims, on the grounds that one does not want to dirty one's hands, is to refuse to take into account the expressive consequences for third parties of abstention - however serious those consequences are. It is to rank one's conception of one's moral integrity too high relative to the plight of those victims.²⁴

The 'conscientious objector' might rejoin that my argument relies on an unfair comparison: instead of comparing the harm done to her moral integrity with the harm done to victims of injustice by the number of abstentions in the aggregate, one should compare it with the harm of the conscientious objector's single vote not being cast. The harm done to the conscientious objector is much greater than the latter, which lends support to exempting the conscientious objector from the duty to vote.²⁵

²³ See, e.g., Maskivker, *The Duty to Vote*, pp. 147-152.

²⁴ See also Anderson and Pildes, 'Expressive Theories of Law', pp. 1513-1514.

²⁵ Thanks to Hasan Dindjer for pressing me on this.

But this seems to prove too much. By that token, a taxpayer could argue that the harm done to her by having to pay thousands of pounds in taxes every year is of far greater magnitude than the harm done to tax recipients by her single act of nonpayment. The comparison, accurate though it is with respect to harm measurement, is not a relevant basis for exempting individual taxpayers from a duty to pay: what is relevant is what benefits individual taxpayers jointly bring about, and whether their individual contributions fall foul of the non-undue costs proviso (however one construes it.) The same applies, *mutatis mutandis*, to the expressive duty to vote and its attendant moral costs.

My argument might seem vulnerable to two objections. First, it is true that by voting, those voters would contribute to a collective expressive act the illocutionary force of which is that, in the aggregate, O_{U^*} is ranked as the most preferred outcome. While their vote would clearly be taken up as a rejection of $O_{U^{**}}$ and as an expression of solidarity with its victims, it would leave victims of O_{U^*} vulnerable. Second, recall (from the introduction to this paper) that public officials do not have authority to make laws and design and implement policies in violation of the demands of basic justice. Citizens who vote for O_{U^*} , thus, do not so authorise public officials. Yet, in s.II, I argued that what distinguishes the vote from other forms of political expression, and what explains why there is a duty to vote and not merely to (e.g.) take part in public demonstration, is the fact that it has exercitive force which those forms lack. It would seem, then, that far from being under a duty to vote for O_{U^*} , citizens are morally permitted to spoil their ballot.

My response to both objections appeals to the framing of the electoral campaigns. Regarding the first objection, if enough voices are heard - from opposition political parties, social media accounts, op-eds in newspapers, interviews on the radio and TV - that at least some pro- O_{U^*} votes could not reasonably be construed as anything other than essentially and only anti- $O_{U^{**}}$, voters committed to justice can rely on at least some pro- O_{U^*} votes being appropriately taken up in this way. Indeed, the fact that conscientious voters are ostensibly willing to vote for an option which they regard as morally repugnant is indication of the depth of their opposition to the more unjust option.

Regarding the second objection, if ballot spoiling is framed during the campaign as merely lukewarm condemnation of the most unjust of the two options, or as mistakenly denoting that O_{U^*} and $O_{U^{**}}$ are on a par, voting for O_{U^*} might be a better, clearer way of aptly ranking them: the greater the moral gap, the more stringent the duty. Crucially, voting for O_{U^*} does not commit voters to refrain from manifesting their opposition to it. On the contrary, they are morally permitted, and are under some expressive duties, to condemn it and protest against it even as it is implemented - as a means to manifest their support for justice.²⁶

²⁶ Thanks to Kerstin Reibold for the point, which does not imply, incidentally, that voters are morally permitted to disobey the resulting law: it may be that, all things considered - for example, taking into

Voters, then, can be held under a duty to vote for O_{U^*} . The claim is contingent on the nature of the debate during the campaign: one can imagine cases in which votes for O_{U^*} could not reasonably be interpreted as a deeply unhappy moral compromise. In such cases, I am sympathetic to the view that voters are permitted not to vote. Once again, it does not follow that they may abstain. If, as I argued above, they are under a duty to cast a spoiled ballot when faced with two equally flagrantly unjust options and when spoiling one's ballot is a meaningful option, they *a fortiori* must do so when faced with two unequally unjust options.

III.4

Consider, next, two scenarios in which voters face a choice between three options. In the first scenario, the options are as follows: a just option with no chance whatsoever of winning (O_J); a unjust option (O_{U^*}) and an even more unjust option ($O_{U^{**}}$). Suppose that the decision-making procedure is plurality rule, under which the winner takes all, and that conscientious voters have good reasons to fear that if they vote for O_J , $O_{U^{**}}$ will win. The only way for them to block $O_{U^{**}}$ is to vote for O_{U^*} , yet they cannot, at the same time, manifest their support for O_J - at least, not through their vote.²⁷

On one view, mooted by Brennan and Lomasky, the most effective way to manifest one's opposition to $O_{U^{**}}$ might be to cast a tactical vote for O_{U^*} .²⁸ This in turn might ground a duty to do so. However, it is hard to see how voting for O_{U^*} rather than O_J is a more effective way to *manifest one's rejection of $O_{U^{**}}$* . It does not make sense to say that one better distances oneself from the worst outcome by voting for the next best worse, when it is possible to vote for the very best.

Of course, it may be that voters are under an all-things-considered duty to vote for O_{U^*} rather than O_J . Whether this is so can only be answered by bringing causal considerations into play. Be that as it may, the expressive case for the moral duty to vote makes no room for tactical voting or, for that matter, for the permission to cast a spoilt ballot, in cases such as these: when O_J is on the table, voters are under an expressive duty to vote for it.

It might be objected that, when faced with those three options, voters are not always morally permitted to go for O_J . If there is significant expressive value to $O_{U^{**}}$ losing and if the only way to do this is by ensuring that O_{U^*} wins, then voters must opt for the latter. However, the objection relies on non-expressive considerations – here, the imperative of

account harms that might accrue from disobedience - they ought to do as the law says. My point here is that they are not under a duty not to express, post vote, their opposition to the law.

²⁷ As we saw above (ft. 15), under preferential voting rules, such as STV, a voter can express her commitment to O_J by ranking it first, and her preference for O_{U^*} over $O_{U^{**}}$ by ranking the former second.

²⁸ Brennan and Lomasky, *Democracy and Decision*, pp. 121-123.

making a causal contribution to O_{U^*} 's victory. While those considerations may dictate in favour of voting for O_{U^*} all things considered, it does not undermine the claim that, on purely expressive grounds, voters ought to vote for O_J .²⁹

The second three-options scenario, by contrast, does allow for expressive tactical voting. Suppose that a voter has a choice between a flagrantly unjust option $O_{U^{**}}$, an option which fully reflects her own commitment to $O_{J^{**}}$, and an option which only partially reflects those commitments but would for some reason do a better job at reassuring victims of injustice O_J . I am inclined to think that she is under a duty to vote for O_J , for reasons similar to those I adduced above (s.III.3) when I discussed choices between two evils: it seems to me that her interest in giving voice to her moral and political identity by expressing her commitments must give way to the imperative of manifesting solidarity with victims of injustice.³⁰

III.5

So far, I have presented the options on offer in starkly binary terms. However, voters often are presented with baskets of options, each of which contains a mix of unjust and just options. Consider an election involving two candidates, *A* and *B*. *A*'s platform contains a strong anti-poverty commitment as well as a plan to impose flagrantly unjust restrictions on immigration. *B* commits herself to loosen up such restrictions but, while paying what seems to be lip service to the imperative of eradicating abject poverty, has a previous record in office of favouring the middle, upper-middle and upper classes.

Voters face two difficulties. First, they have to decide how to rank the competing values at play, which many are likely to find fiendishly difficult. Now, in s.III.1, I argued that epistemically humble voters who are unable to make up their mind as between two options neither one of which is flagrantly unjust are (depending on the facts of the case) under a duty to cast a vote against long-term incumbents, or to take part in the poll and

²⁹ Thanks to Orlando Lazar's for this interesting suggestion.

For the parallel view in empirical political science that expressive accounts of voting behaviour cannot explain tactical voting, see, e.g., Christiano, 'Is Normative Rational Choice Theory Self - Defeating?', p. 139; K. Dowding, 'Is it Rational to Vote? Five Types of Answer and a Suggestion', *British Journal of Politics & International Relations* 7 (2005): 442–459, p. 453; M. Ridge, 'Voting for Less than the Best', *The Journal of Political Philosophy* 29 (2021): 404–426. There is a dearth of works on the ethics of tactical voting. (See, though, S. F. Geisz, 'An Indirect Argument for Strategic Voting', *Journal of Applied Philosophy* 23 (2006): 433–444, and Maskivker, *The Duty to Vote*, pp. 147-152.) Note that the view I am describing in this paragraph is compatible with the broader claim that voters are not under a duty to vote: one can on the one hand say that voters are morally permitted to abstain, and on the other hand say that *if* they choose to vote, and *if* they do so on expressive grounds, then they must cast a valid vote for the just option.

³⁰ Thanks to Linda Eggert and Andrew Walton for bringing this kind of case to my attention.

spoil their ballot if they are given the opportunity meaningfully to do so - failing which they are morally permitted to abstain. I see no reason to treat the case of voters presented with baskets of options as described above any differently.³¹

Second, even if voters reach a considered judgement as to how to rank those two baskets, they run the risk that their vote will be misconstrued. While many of those who will vote for *A* will likely do so out of anti-foreigner prejudices, others will do so out of commitment to the eradication of poverty. Contrastingly, while many of those who will vote for *B* will likely do so out of commitment to a just immigration policy, many will likely do so on the basis of what they think is a much sounder economic programme. Support for *B* cannot be confidently interpreted as a rejection of *A*'s anti-immigration policies rather than an endorsement of distributively unjust policies; conversely, support for *A* cannot be confidently interpreted as a rejection of *B*'s economic programme rather than as support for unjust immigration policies. If so, it is not clear that votes for *B* have the expressive force of countering the harms incurred by victims of unjust immigration policies and of distancing those voters from *A*- and *vice versa*.

Earlier, we saw that voters faced with only flagrantly unjust options are not under an expressive duty to vote, yet are under a duty to take part in the poll and spoil their ballot if the conditions under which the campaign was conducted are such that their vote cannot be reasonably interpreted as the manifestation of a moral compromise, or if they face two equally and flagrantly unjust options. The difference between those cases and cases involving choices between sets each of which includes a mix of unjust and just options, is this. In the latter cases, to vote for *A* or *B* is to manifest one's willingness to authorise the implementation of either one of the just policy in each bundle. Although such a voter cannot be presumed to be willing to authorise the implementation of the unjust policy, the fact is that she is manifesting some willingness to contribute to a state of affairs in which officials will implement the unjust part of the bundle, as the price to pay for explicit support for the just part. Her situation is relevantly similar to that of a voter who faces two options, one less unjust than the other. For in the case under consideration here, the voter determines that *A*'s bundle is, *all things considered* and thanks to the presence of just distributive policies, less unjust than *B*'s bundle notwithstanding the option therein of a just immigration policy. So long then as voting for either option is construed in such a way during the campaign that it can plausibly be taken to express, not necessarily enthusiastic endorsement of its unjust parts but, rather, an unhappy moral compromise, voters' concerns about their vote being misconstrued do not stand in the way of their expressive duty to cast a valid vote, and for their first-ranked preference. Failing that, they are under a duty to take part in the poll anyway, albeit by spoiling their ballot: if they must do so when there is no just option on the table, then *a fortiori* they must do so when

³¹ Thanks to M. Lepoutre for pressing me on this problem.

there is one.

IV OBJECTIONS

In this section, I tackle four objections: (1) to the extent that abstention also has expressive force, it is unclear why voters are under an expressive duty to vote; (2) the fact that the ballot is secret deprives it of its expressive force; (3) the expressive account is not a genuine alternative to some of its rivals; (4) one vote does not make a meaningful expressive difference.

IV.1

Some voters, among those who abstain, do so as a way to manifest their anger at politicians, their disgust with politics, their feelings of disenfranchisement and their belief that, however they vote, ‘nothing will change anyway’. If voters can express themselves by staying home and voting with their feet, why are they under a moral duty to do so with (as it were) their hands? After all, in interpersonal contexts, silence can be a more appropriate way to manifest one’s opposition to, e.g., hate speech.³² The same holds - a proponent of the objection might say - in an election or referendum.

I agree that, sometimes, to respond is to dignify what ought to be treated as beneath dignity. However, on the expressive account, voters are asked not merely to issue a verdict about the options on offer, but also (depending on the options on offer) to manifest their willingness to authorise officials to issue relevant directives. Proponents of the abstention objection must show that voting - in all its illocutionary dimensions - is never a morally preferable way to abstaining as a way of expressing support for justice. Yet, not only is abstention a more ambiguous way of issuing a verdict on the options on offer; it also falls short of expressing one’s willingness to authorise one’s preferred option or the winning outcome. When the choice is between a just option and its unjust counterpart, e.g., for/against gay marriage, or for/against capital punishment, or when it is a choice between options none of which violates the demands of basic justice, or when there is at least one just option on the table, the objection against the expressive case fails: voters may not opt out of publicly expressing their commitment to justice through the transparent procedures of a ballot. The objection also fails in so far as voters can, by taking part in the poll though spoiling their ballot, express, and be taken to express, their support for democratic procedures in principle as the best way to settle disagreements about justice

³² A. Tanesini, ‘Eloquent Silences: Silence and Dissent’, in *Voicing Dissent: The Ethics and Epistemology of Making Disagreement Public*, ed. C. R. Johnson (Routledge, 2018). On silence as a form of speech, see also P. Pettit, ‘Enfranchising Silence’, in *Rules, Reasons, and Norms* (Oxford University Press, 2002).

authoritatively.

IV.2

‘Express what you think by voting’, voters are told. Yet, ballots are cast in secret. This is thought to pose two problems for the expressive account. First, in the examples I gave earlier - of the judge and the examiner - it seems important that the individual holder of the expressive duty be known, as a precondition for public accountability. The same holds (it might be said) of the vote. The expressive case for the duty to vote undermines the case for the secrecy of the ballot box.³³

In reply: let us grant for the sake of argument that reasons in favour of the secret ballot are dispositive, and that some expressive duties cannot properly be discharged unless their holder is known. The expressive account survives the challenge. In fact, there are countervailing expressive considerations in favour of secrecy in this case. Voters committed to justice might be liable to harassment or worse at the hands of their opponents, which would undermine their ability to express those commitments at the ballot box. Moreover, the secrecy of the ballot box helps alleviate the aforementioned worry that victims of material and expressive harms cannot be given sufficient reassurance that those who vote in ostensible solidarity with them actually do mean it: the fact that voters lack incentives for virtue-signalling and moral grandstanding strengthens the expressive force of their vote.³⁴

Second, if the ballot is secret and if I remain silent, no one will know how I voted, whereas if I attend a anti-racist demonstration, at least some people (those who march alongside me, for example) will know that I oppose racism. The secrecy of the ballot box - it is sometimes said - vitiates the rationale for the expressive duty to vote, which is that we engage in an act of public expression. As Christopher Freiman, a trenchant critic of the duty to vote, puts it, casting one’s vote in secret for a policy or candidate is no more expressive of one’s commitment to the latter than, for example, clapping in support of humanitarian workers from the solitude of one’s living room is expressive of one’s commitment to humanitarianism.³⁵

The analogy does not work. If I clap in the solitude of my living room, no one will hear. If I vote, my ballot will be counted and will figure in the final tally even if it is not attributed to me. The expressive argument is not committed to the view that the

³³ Thanks to a participant at the February 13 2023 meeting of Oxford Philosophy Society Seminar for the point. Geoff Brennan and Philip Pettit argue against secret ballots in G. Brennan and P. Pettit, ‘Unveiling the Vote’, *British Journal of Political Science* 20 (1990): 311–333.

³⁴ Thanks to Maxime Lepoutre for the point.

³⁵ Freiman, *Why It’s OK to Ignore Politics*, pp. 106-107. See also E. Beerbohm, *In Our Name - The Ethics of Democracy* (Princeton, N.J., 2012), p.59; Lomasky and Brennan, ‘Is there a Duty to Vote?’, pp. 82-83.

addressees of my expressive act should be able to identify *me* as having cast my ballot (e.g.) in favour of gay marriage or against capital punishment. What matters is that I should express the relevant commitments. I am under a duty to add my voice to the choir even if it cannot be heard in its singularity, indeed even if no one knows that I am singing.

IV.3

It might be objected that the expressive account unavoidably relies on considerations of causal efficacy, and is thus not a genuine alternative to its mainstream rivals. For example, in his important book on free-riding, Richard Tuck avers that expressive accounts of voting necessarily rely on the view that voting is causally efficacious: ‘Even if the act of voting does express something..., it does so precisely because it is widely thought to have [a] *point*, that is, to have some instrumental or causal relationship to the choice of a candidate or a plebiscitary proposal.’³⁶ Tuck’s point generalises to other kinds of expression, such as an explicit commitment to justice and a manifestation of solidarity with victims of injustice. For if the duty so to express oneself is grounded in the thought that those forms of expression mitigate the wrongful harms - material or expressive - of racism, of the dismantling of the welfare state, etc., then the duty to vote presupposes that one’s vote will be a causally efficacious mitigating measure.

Interestingly, however, Tuck also says that a voter who lacks an instrumental reason to vote because she does not believe that her vote will be *causally efficacious at pushing her preferred option over the winning threshold*, as distinct from causally efficacious as an expressive act, can nevertheless have non-instrumental reasons to do so, such as ‘registering that there is at least one communist voter in Kensington.’³⁷ This, in fact, is precisely the kind of expressive considerations which, I have argued, can underpin a duty to vote - a duty which holds even if pro-justice votes have no chance whatsoever of winning. Imagine a country whose population is entirely white, which has not signed up the 1951 Refugees Convention and which operates a racist immigration policy: whites are let in and non-whites are kept out. This is a flagrant injustice. Under international pressure, the government conducts a referendum to decide whether to dismantle the legal apparatus of racial segregation at the border. It campaigns in favour of the *status quo*. Suppose that Mary has very strong reasons to believe that she is the only voter who will vote for change. Her situation is relevantly analogous to Leo’s. If Leo can be held under an expressive duty to put up an anti-racist sticker to manifest his solidarity with James even in the face of Rob’s consequent refusal to take his own BNP sticker down, Mary can be held under an

³⁶ Tuck, *Free Riding*, pp. 33-34.

³⁷ Tuck, *Free Riding*, p. 60. To non-British readers: the Royal Borough of Kensington and Chelsea in London is one of the United Kingdom’s most expensive areas to live in.

expressive duty to vote against her country's racist policy even in the face of her fellow voters' grievously unjust imposition of material and expressive harms on distant strangers. Her vote may not be causally efficacious in relation to the final outcome; but it is causally efficacious, in and of itself, at demonstrating that not everyone is a racist, and under some circumstances it might be causally efficacious at reassuring victims of racism. And even if it mitigates those harms by an infinitesimally small fraction, Mary is still under a duty to cast it. Indeed, her duty may be the more stringent precisely for the fact that she will be the only one to vote against racist policies.³⁸

The expressive account, thus, offers something which standard causal-efficacy defenses of the duty to vote (which focus on efficacy in one's candidate or favoured option winning) leave unexplained: it brings into salience the fact that making a difference to the winning outcome is not the only thing that matters; it also matters what one does for the losing side.

IV.4

But perhaps this is too quick. Suppose that the government holds referenda on whether to allow gay marriage or to re-instate capital punishment. Does it really matter that 34,567,890 rather than 34,567,889 vote for gay marriage? Does it really matter that 15,673,492 voters rather than 15,673,491 vote to express their opposition to capital punishment? It might be thought that this single vote does not add any expressive value to the aggregate of similar votes, and that it is hard to see, then, how whichever voter would cast it could be under an expressive duty to do so. What matters is that *enough* voters should express a commitment to justice.

This objection is often deployed against arguments for the duty to vote which rest on causal contributions to winning outcomes.³⁹ Familiar responses to the objection as deployed against those arguments apply here too, *mutatis mutandis*. First, the aforemen-

³⁸ See, e.g., J. Lackey, 'The Duty to Object', *Philosophy and Phenomenological Research* 1 (2020): 35–60, p. 42. Lackey makes that point while defending the view that agents are under epistemic (as well as moral) duties to correct false statements: *mutatis mutandis*, it applies here.

Incidentally, the point that a single, 'solitary', vote might have more expressive force than if it is one vote among many raises an interesting question (for which thanks to Theron Pummer). Suppose that Mary can be one of, say, only two voters casting their vote for O_{J^*} or one of many voters casting their vote for $O_{J^{**}}$. Her vote has greater expressive force in the first case than in the second case. Both options pass some justice threshold. The question is whether she is under a duty to cast her vote for the most just option, or whether she is under a duty to do whatever has the greatest expressive force. I am inclined to think that she ought to vote for O_{J^*} .

³⁹ See, especially, Brennan, *The Ethics of Voting*, pp. 36-28 and Brennan, 'Medicine Worse than the Disease?')

tioned point about risks bears repeating. Voters who are faced with a choice between justice-violating and justice-compliant outcomes do not know whether enough of their fellow voters will vote for the latter. A voter who abstains runs the risk that expressions of commitment to justice fail to mitigate the expressive harms occasioned by expressions of commitments to injustice. Generally, individuals are under a duty to avoid imposing unnecessary risks on one another. By implication, then, each voter is under an expressive duty to vote (well). Analogously, suppose that I do not know for sure that enough people will be willing to take part in rescuing an endangered swimmer. If I am in a position to help, I am under a duty to do so - even if, it turns out, my help was not required after all.⁴⁰

This first response does not account for cases in which we know for sure that, say, c. 30% of voters will express their commitment to (e.g.) gay marriage and in which (let us postulate) this goes some way towards mitigating the expressive harm of homophobic laws. The second response does, however. The objection presupposes that, so long as enough conscientious voters vote, turn-out is irrelevant. However, turn-out does matter: the stronger the expressive support, *qua* expressive support and with the illocutionary force of a vote, for a just policy, the clearer it is to victims of injustice that they do not stand alone.⁴¹

Those two points also apply to cases in which the set of options on offer does not include flagrantly unjust options. For in such cases, the silent voter runs the risk that there will not be enough votes to signal, in the aggregate, voters' commitment to democratic institutions as the best mechanism to settle disagreements between citizens authoritatively; moreover, it matters too that expressing support for those institutions should be as strong as possible.

But now a worry arises. Suppose that on election day, I can either vote or take part in last-minute doorstep campaigning to get the vote out, in areas in which turn out has generally been low and yet where voters, if they do vote, will vote well expressively speaking. I have every reason to believe that I will convince at least two otherwise abstaining voters

⁴⁰ For an earlier version of the risks argument, see D. Parfit, *Reasons and Persons* (Clarendon Press, 1984), pp. 73-75.

⁴¹ I adapt to the expressive account Alex Guerrero's claim (in response to the objection as deployed against the rationality of voting) that increasing officials' mandates does matter. (See Guerrero, 'The Paradox of Voting and the Ethics of Political Representation'.) For a similar response to mine, see Fumagalli, 'The Place of Voting in the Ethics of Counterspeech', p. 8. It has been argued that the greater the expressive power of a voting rule and the better known to voters that power is, the greater the turn-out. This grounds a reason to adopt this voting rule on expressive grounds. At the same time, if that voting rule makes it less likely that each vote is pivotal and is known to do so, and if some voters care more about making a difference than about expressing themselves, adopting that rule will lower turn-out. (Bourgeois-Gironde and Ferreira, 'The expressive power of voting rules'.)

to cast their ballot as required (on expressive grounds) by justice.⁴² If expressive turn-out matters for the reasons just indicated, it seems that, not only am I not under a duty to vote but, more strongly still, I am under a moral duty *not* to vote and instead get the vote out.

This is intuitively powerful, and qualifies the case for the duty to vote. Note, however, that the qualification is no reason to abandon expressivism altogether: the voter, here, is under an expressive duty to incite fellow voters to discharge *their* duty to vote - which duty can be grounded in expressive considerations.

V CONCLUSION

In this paper, I combined four different bodies of literature - on expressive voting, the ethics of voting, illocutionary acts, and duties to counter hateful speech - into a case for the expressive duty to vote. When the conditions under which voters are under such a duty are not met, the latter can nevertheless be held under an expressive duty to go to the poll and cast a spoiled ballot: only rarely are they morally permitted, on expressive grounds, to abstain altogether.

I have imposed two restrictions on my argument. On the one hand, I have focused on expressive considerations. Yet it may well be that non-expressive considerations such as agential support or reciprocity tilt the balance against (or, as the case may be, for) the duty. On the other hand, in common with virtually all the literature on the duty to vote, I have focused on stable liberal democracies, where conditions of basic electoral integrity are securely met. Whether voters are under a duty to vote all things considered, and in fragile, emergent and backsliding democracies, is a question which must await another occasion.

⁴² Thanks to Fiona Woollard for the example.