Representative Democracy and Political Entitlement: How to Morph the Right to Candidacy into a (reasonably) Democratic Right

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Abstract

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The thesis is a monographic work on the Right to Candidacy, in relation to the way in which it is most commonly shaped within extant practice today. The matter has been so far neglected by democratic theory. The focus of attention of democratic interest has been on the role, duties and claims of citizens as voters. But the Right to Candidacy is also a paramount political right within modern representative democracies. Glossing over its status has led to a myopic understanding of the status of citizens as political equals, handicapping their agency in the amelioration of the problems that democracy faces, and impeding the achievement of democratic justice. As a response to this, my thesis asks and answers what the scope and the content of the Right to Candidacy would be if it were a (reasonably) substantive democratic right within contemporary liberal and representative democracies?

Chapter 1 presents an overview of extant empirical practice in relation to legal qualifications for office, which formally define the set of its right-holders. It contrasts them with those of the Right to Vote and claims that the formal construction of the limits of the Right to Candidacy should be symmetrical with that of the Right to Vote. Chapter 2 looks at the hurdles on the individual right to candidacy set at an informal level that impede substantive equality of opportunity for the exercise of the right. It argues that the instauration of intra-party candidate nomination quotas can constitute a salutary measure against this. Chapter 3 develops an argument for the claim that, other things equal, intra-party deliberation is a civic responsibility for political parties in face of their role as funnels of candidates for political office in the sort of representative democracies we have today.

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0 Introduction

> "The great question which in all ages has disturbed mankind, […] has been, not whether there be power in the world, nor whence it came, but who should have it.[…] A reformer of politics, one would think, should lay this sure, and be very clear in it: for if this remain disputable, all the rest will be to very little purpose".[1]

Democracies around the world have been facing many problems in the last decade. Amongst these, arguably one of the most worrying, is the growing discontent of people with their governments. Such discontent can be attributed, first, to their growing perception of office holders as inefficient in the running of their countries, combined with an expanding suspicion of the effectiveness of government in deciding policy upon traditional sources of expert knowledge (this was exacerbated by the financial crisis in 2008). Second, citizens' discontent with office holders comes from generalized mistrust in on the reasons behind their policy choices, which seem to be in service of their personal interests, rather than those of their constituents. Last, the estrangement between so called 'ordinary people' and ruling elites, a constant of modern democracies, still poses a deep challenge for representative democracy.

The concrete manifestations of these challenges for democracy today are myriad and have been covered from different angles by many political scientists and theorists. The rise of populism has particularly been a focus of interest in the most recent literature. Yet, another set of issues which have risen academic concern are those relating to the specific patterns of voter behaviour in the selection of government. Low voter registration and turnout are a constant in contemporary elections, accompanied by noticeable rates of vote spoiling. Overall voting trends on office holder election tend to respond to the desire to punish the incumbent party for their actions or omissions, in combination with a discontent

[1] John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960). Book I, Chapter XI

with the ballot options they, as voters, are faced with. This has led many to choose who they consider the "least bad" candidate or party.[2]

Additionally, an emerging voting pattern is the favouring of candidates who voters perceive as options divergent from traditional political elites. Yet, it is unclear if this phenomenon has helped people feel more connection to those who end up as their representatives. Indeed, the overall bias in modern democracies for elite election cannot be said to have changed substantially. What has changed is the type of preferred elites. Rather than traditional career politicians, preferences have skewed to favour powerful businessmen or different celebrities and public figures (such as actors, comedians, sport champions). This latter situation, rather than solve the representative crisis, has added to the problem of the competence for office holding of this new type of candidate who is unfamiliar with the nuts and bolts of politics.[3]

The empirical and normative debates these issues have given rise to, range from considerations on how voters should or could strategize their votes, and whether different models of vote aggregation that better reflect voters' preferences could and should be institutionalized, to whether voting registration and turnout should be made compulsory. Also, the concern with the state of contemporary democracies has reinvigorated an interest in the size of the franchise, and proposals for its expansion have been championed both as a path to the empowerment of more people, as for the enhancement of the quality of the resulting electoral representation. Also, the normative question of what the ethics of voting and of electioneering are, has drawn attention recently.[4]

[2] The recent election of Brazil's far-right president Jair Bolsonaro, along with the election of Donald Trump in 2016 are salient examples of this.
[3] A central example of this is again Donald Trump, as an impulsive business man but other cases could be added such as Italy, Mexico's Governor for the state of Morelos, Cuauhtémoc Blanco, a former football player, who during his campaigns rally failed to remember the party he was running for, etc.
[4] Whether voters should decide in relation to their self-interest or to their understanding of the common good, what sort of campaigns candidates should run, etc.

Furthermore, recent democratic proposals and developments have looked at how the role of citizens as democratic members of their polity could be enhanced through the promotion of systematic formal and informal spaces of political deliberation and discourse formation, which move democratic activity past formal electoral practices. Different mechanisms to promote representative accountability and to bridge distances between them and their constituents have exercised, both in theory and practice. In addition, alternatives to traditional party structures (such as independent candidacies), and guidelines for party reform have been put forward and tried out across a range of countries. Finally, the worry of how to enhance the political representation of certain marginalized groups, has drawn a significant attention in political theory literature and has inspired models for institutional engineering.[5]

Despite all these democratic advances, there is still a fundamental feature of representative democracy that has surprisingly received little to no attention, both from academia, as from the general public. This is the role played by the formal and substantial shape and function of the Human Right to Candidacy (the right of every citizen to run for office, henceforth RC), within this context. Indeed, the focus of attention of scholars and the public alike has been placed on the activity, duties, and legitimate claims of citizens as voters.[6] And yet the RC, commonly referred to as the "opposite side of the coin" of the right to vote (RV), or even as the "passive suffrage", is also a paramount political right within the structure of modern representative democracies. Indeed, in general historical terms, the progressive expansion of the RV and of the RC to more members of the polity was understood as the fight for a universal 'full franchise'. Glossing over this fact by

[5] An example of this is the growing popularity of quotas for legislative bodies' seats, or quotas enforced on party lists.

[6] First, on defining exactly what such claims are, both in relation to their electoral role, as on their wider claim to influence the formulation of the political agenda. And then, according to what those answers are, in looking for technical solutions that could advance them.

overlooking the status of the RC, as has so far been the case, has led to a myopic understanding to the status of citizens as political equals, and has consequently handicapped their full potential to participate in the system as such, and to be agents of its amelioration.

In response to this situation, my thesis develops an account of the democratic dimensions of the RC, both in relation to how they are considered legally, and how they play out empirically, as in relation to what I argue they should be. In other words, it is a contention of mine that the RC should be studied under the lens of its status as a fundamental democratic right, and the claims such a status gives rise to. A focus on the matter, I believe, has a strong potential for addressing a significant part of the obstacles I have described as faced by current democracies. Overall, I believe a work of this sort, which has so far not been done, can get us closer to the ideal of democratic justice that allegedly guides our political lives today, along with the specific design of the representative and democratic institutions we have put in place. In a nutshell, my thesis asks and answers what the scope and the content of the RC would be if it were a (reasonably) substantive democratic right, within contemporary liberal and representative democracies.

Aristotle famously claimed that the true essence of citizenship, more than the formal aspects of their recognition, was that a citizen "should know how to govern like a freeman, and how to obey like a freeman".[7] In the direct democracy of the Athens of his day a principle of that sort might be said to be respected insofar as citizens were expected to be prepared to govern as part of the assembly and in a public office, if drawn from a lot. Within the indirect representative democracies of our day, a principle of that kind still holds in a sense. Indeed, the idea of a universal voting franchise is meant to guarantee that

[7] *Politics*, book XIII

all citizens exercise political power, and thus guide the destiny of their polity, at least as much as needed to select office holders by election. The expansion of that power is promoted by other means of citizen input through specific group decision mechanisms such as referenda and in general through the formulation of the public agenda based on citizen deliberation and idea interchange within a context of freedom of speech.

Nonetheless, both empirically and theoretically, the accent of political equality as the linchpin of democracy has been put fundamentally on the right of citizens to vote, and on whatever is needed to substantially guarantee that right. Yet, contemporary western democracy is predicated upon a package of political rights in which the right to run for office is as fundamental as the RV, and the right to freedom of expression. Yet, within current democracies, this latter fact can, in practice, only be fully exercised by the minute minority of the citizenry who will ever have the chance to run for political office. Given that this is a necessary trait of the system due to the empirical impossibility for it to be otherwise, it is understandable that the consideration of the requirements of justice imposed by the RC have been neglected.

However, there is no reason for us to think that empirical constraints on how many people can in practice be candidates for a given election justify as such the current shape and boundaries of the RC as they are today. Indeed, as I shall argue in the thesis, the normative weight of the RC is not met by merely guaranteeing fairness in the electoral race for those who end up as contenders within it. The RC encompasses an ideal of equality of opportunity for running, that is, a situation of fairness whose threshold is to be set before the race itself. In other words, the RC, under the universal ideal under which it has arguably been formulated, is meant overall to protect the ‘eligibility’ for office of all the citizens of a given state.

Such ‘eligibility’, as my thesis argues, encompasses both a formal and an informal dimension. On the one hand, the ideal of a universal full franchise includes within it the ideal of the extension of the franchise to all citizens, unless there is enough reason to restrict it otherwise. In a formal, or merely legal sense, this is meant to be satisfied by establishing a set of as minimal conditions of eligibility for office as possible, as presumed to be reasonable. Whether existing legal restrictions can indeed be said to be reasonable has received very little attention, though I claim that many of those restrictions are not set at what the reasonable threshold would be.

Moreover, however, there is a substantive dimension of the right to which even less attention has been paid. In short, the substantive dimension of the RC, the right to be ‘eligible’ for office, implies at the very least that, as much as the material conditions of a state would allow for, as much of the population as possible would have the opportunity to run for office on their sphere of potential activity, irrespective on whether the actualization of such a potentiality would actually fall within their sphere of interest. For this condition to be met, I argue, unnecessary hurdles on the exercise of the right need to be eliminated.

The underlying claim of my project is then that as long as democratic citizens are unjustly disempowered in both senses disempowered of the word, both by being formally excluded from the possibility to run for office, and substantively impaired in their ability to do so, where they would otherwise be willing to run, as I find it to be the case in either or both dimensions in most countries of the world, we will not be fully prepared to address the crises faced by representative democracies today, particularly those which I have described above.

Given the lack of literature regarding the problem above, the immediate temptation might be trying to merely extend the logic developed in the literature and the practice of

the RV, to solve it. However, within the thesis I argue that a straightforward extension of such a logic does not work. Indeed, there are certainly good reasons to consider the RC and the RV as sister rights. Both are, after all political human rights fundamental to representative democracy. Yet that does not mean these rights are twins. The major failure faced by a mere extension of the logic applied to voting rights to candidacy rights is the fact that the normative weight of individual political interest at play in such a logic is insufficient to ground and shape a citizen's RC.

My work delves into this issue in order to formulate a normative framework for the RC that accounts for the incorporation of citizens' interests in representation, into the democratic individual liberty framework that the RC occupies by mere analogy with the RV. The normative grounding of the RC will thus stem from the conflation and hierarchization of a set of contesting interests such as those of the state in democracy, of voters in freedom of choice in candidate selection and representation, of citizens as pre-emptively equally entitled to candidacy rights, and the benefits that stem from getting to be one, and of parties in securing ideology, representation of a certain kind (insofar as this latter should be also a matter of democratic negotiation), etc. The structure of the RC is, after all, meant both to fulfil an individual citizen's right to equal participation in the government of one's country, along with the need for the representative system to provide a mechanism of political selection akin to its principles. In this sense, my work contends that a plainly individualistic account of democratic rights as applied to the RC needs to be tempered by a reasonable set of representative considerations, insofar as both interests (democratic and representative) can sometimes come to be in normative confrontation to each other.[8]

[8] On this matter see the vast amount of literature focused on the intersection between democracy and representation. In particular on the question whether representation is democratic or not. For a recent discussions on the matter see Nadia Ubinati, *Representative Democracy*: *Principles and Genealogy* (Chicago: University of Chicago Press, 2006); and Winfried Thaa, "Issues and Images – New Sources of

The thesis is, in sum, a monographic work on the RC. It covers a set of problems ranging from the formal shape it takes within existing legal frameworks, to the substantive claims that it can be said to pose. These problems are addressed by combining the individual claim or entitlement that the RC can be said to consist on, under the consideration a more systemic understanding of it as a as a mechanism of political selection to constitute a representative and democratic mode of government. In order to do so, the thesis engages both with philosophical literature on democracy, human rights, and government justification, along with mid-level theories of representation, partisanship, and political selection. The thesis additionally engages with legal literature on the status of the RC as a constitutional right in many countries along with the role it plays within their electoral institutions and practices, as well as its status as an internationally recognised human right.

I do this first by analysing what the RC presupposes at a formal level, and then by analysing the substantive content of the right as a perceived opportunity to run for office in relation to the quality of citizenship and substantive political equality it can provide, in relation to substantive measures to implement that. Finally, I discuss how the democratic dialogue upon which representation needs to be built can be improved by enhancing citizens' perception of themselves as full candidates and, as such, better engaged with the problem of what makes a competent office holder, (which can hardly be said to be a settled matter) itself, along with what criteria accounts for representativeness. The latter is meant to work in a way that mirrors citizenship deliberation about policy issues today.

Inequality in Current Representative Democracy," Critical Review of International Social and Political Philosophy 16, no. 3 (2016) . Examples of this debate are also: Melissa Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton: Princeton University Press, 1998); John Dryzek and Simon Niemayer, "Discursive Representation," *American Political Science Review* 102, no. 4 (2008): 481–93, Jane Mansbridge, "Rethinking Representation," *American Political Science Review* 97 (2003): 515–28, and "A Selection Model of Representation," *Journal of Political Philosophy* 17, no. 4 (2009): 369–398; and Suzanne Dovi, "In Praise of Exclusion," *Journal of Politics* 71, no. 3 (2009): 1172–1186.

Two final comments on the method. The project will be carried out in the style of analytic political philosophy and will work with the mainstream assumptions and arguments of current democratic theory in the liberal tradition. As work in political theory shaped in this way, my project will deliver abstract and general normative guidelines, not prescriptions for concrete constitutional engineering within real politics, which require concrete prudential consideration in the Aristotelian sense, which are of a kind not available to a work of this sort.

0.1 Literature review

This section provides a brief discussion in relation to the state of the art of philosophical studies on restrictions to the RC. Through it, I pinpoint the places where this literature can be found lacking in quality and quantity and demarcate the place that my work takes within it. I also include references the main literature on RV restrictions, insofar as this can be claimed to be the nearest field of study. This should allow the reader to get a better sense of what the nature of my work is.

There are very few works within Political Theory that deal with RC restrictions. Indeed, to my knowledge, the only authors that have dealt with the topic are the ones which I introduce here. Moreover, such body of work is underdeveloped (a monographic work on the matter does not yet exist for instance), and insufficient for solving the sort of problems that arise from the ways in which the RC is, or could be, qualified. I am not able within this introduction to provide an in-depth analysis of the matter. However, that work is itself be a contribution of my dissertation.

The few works that deal with the issue oscillate between the attribution of the normative import of this right to a characteristic of the individual who wishes to run (as her autonomy or dignity), or to the voters' interest in being represented or benefitted in

some way. Neither of them, however, provides a thorough approach for deciding what course should be taken when their preferred rationale either supports two different courses of action, or clashes with another rationale. Classically, Robert Dahl and John Rawls belong to the first group, while Charles Beitz belongs in the second.[9] More recently, Alecia Johns, Andrew Rehfeld, and John Seery have claimed it is both.[10] Also recently Corey Brettschneider can be said to belong to the first group, and Richard Arneson and Claudio Lopez-Guerra to the second.[11] Let me flesh out the most important amongst these.

Dahl considers the RC, in and of itself, a key aspect of his inclusive citizenship. He defends its extension to all adult members of a polity, with exception of "transients and people proved to be mentally defective"[12]. However, he provides no guidance as to why and how boundaries to define adult members of a polity (such as age of majority or time of residence) can be established. In addition, he does not explain what should be done in cases where an appeal to inclusivity in relation to this right could, for instance, deliver negative results for the citizenry, thus counteracting the reason they would want to be included in the first place.

Rawls goes further in developing a normative rationale to judge RC restrictions. He considers the RC (independent of the RV) as one of the basic liberties encompassed by his first principle of justice and states that its morally legitimate restrictions are

[9] Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989) and *On Democracy* (New Haven: Yale University Press, 1998), John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), Charles Beitz, *Political Equality: An Essay on Democratic Theory* (Princeton: Princeton University Press, 1989).

[10] Alecia Johns, "The Case for Political Candidacy as a Fundamental Right," *Human Rights Law Review* 16, no. 1 (2016): 29–54, Andrew Rehfeld, "On Quotas and Qualification for Office," in *Political Representation*, ed. Ian Shapiro et al. (Cambridge: Cambridge University Press, 2009), John Seery, *Too Young to Run? A Proposal for an Age Amendment to the US Constitution* (University Park: Pennsylvania State University Press, 2011).

[11] Corey Brettschneider, *Democratic Rights: The Substance of Self-Government*, vol. 53 (Princeton: Princeton University Press, 2007), Richard J. Arneson, "The Supposed Right to a Democratic Say," in *Contemporary Debates in Political Philosophy* (Oxford: Wiley-Blackwell, 2009), 197–212.Claudio López-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (Oxford: Oxford University Press, 2014).

[12] Dahl, Democracy and Its Critics, p.129.

"qualifications of age, residency and so on". The rationale behind such legitimacy is given in terms of those qualifications being "reasonably related to the tasks of office". The condition for such restrictions not being discriminatory is that they fall "evenly on all persons in the normal course of a lifetime."[13] Rawls, however, comments no more. As such, further explanation of what that reasonableness would entail or how it could be justified is lacking. There is need for a clearer sense of whether features of the 'tasks of office' provide the relevant ground for the normative criteria we might need.

For Charles Beitz the right to hold office (for which the RC is an opportunity for), is "properly conceived as an opportunity for service and self-development, analogous, perhaps, to the right to choose a career."[14] Yet, unlike Rawls, guaranteeing the overall fairness of the agenda design is for him an important consideration when choosing who can be allowed to run. As such, the RC is not considered by Beitz as a fundamental political liberty, albeit it can carry some benefits for the person who might come to hold office, just as many other social positions.

Finally, Alecia Johns has recently carried out work on the RC which provides a legal case for affirming the RC as a human right. However, she leaves a significant amount of indeterminacy on normative criteria for qualifying it, which might prove necessary even if it were granted to be a human right.[15] Johns analyses which individual interests might be said to be fulfilled through the RC. She claims it would fulfill interests such as self-expression, self-development, and autonomy, and defends it on these grounds. But, contrary to Beitz, the RC is considered by her a fundamental political liberty because of this.

[13] Rawls, *A Theory of Justice*, p.196
[14] Beitz, *Political Equality: An Essay on Democratic Theory*, p.174
[15] Johns, "The Case for Political Candidacy as a Fundamental Right."

In stark opposition to work related to the RC, philosophical literature on the voting franchise has been burgeoning lately. I find that one of the reasons the RC has received so little attention is explained by the fact that it has wrongly been thought of as being in correlation the RV, as I argue in the thesis.[16] The following are notorious examples of works on RV restrictions. Some focus on specific restrictions, while others provide a more all-encompassing normative framework with which to evaluate RV qualifications.

Philippe Van Parijs has questioned the morality of minimal restrictions on age when these conflict with intergenerational justice.[17] Jason Brennan has argued in favour of restricting the RV to people who have "good epistemic credentials about politics", given the moral implications of affecting other people with uninformed decisions.[18] In contrast, David Estlund has argued against any of those types of restrictions on the grounds that their introduction would only be morally justified if it could be accepted by all reasonable relevant points of view, which, he argues, is impossible.[19]

Lately, there has also been a growing interest on RV restrictions fuelled by recent events both on the right of felons to vote, and on the right of children to vote.[20] Finally, two monographic works on voting restrictions in general have been carried out by Ludwig

[16] A classic example of this assumption in political theory is Hannah Arendt who claimed that the RC (*eligibility*, as she terms it), is an inalienable right of every citizen and, as such, applicable to all citizens without qualification. However, she still considers it to be a corollary of the RV, and gives it no further attention. Hanna Arendt, *On Revolution* (London: Penguin, 1963).
[17] Philippe Van Parijs, "On the Disenfranchisement of the Elderly," *Philosophy and Public Affairs* 27, no. 4 (1998): 101–17.
[18] Jason Brennan, *The Ethics of Voting* (Princeton: Princeton University Press, 2012), p.104
[19] David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008).
[20] Examples of the first are: Joseph Kleinig and Kevin Murtagh, "Disenfranchising Felons," *The Journal of Applied Philosophy* 22, no. 3 (2005): 217–39., Claudio López-Guerra, "Disenfranchisement on the Basis of Felony Convictions," in *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (Oxford: Oxford University Press, 2014), Peter Ramsay, "Voters Should Not Be in Prison! The Rights of Prisoners in a Democracy," *Critical Review of International Social and Political Philosophy* 16, no. 3 (2013): 421–38.Jeffrey Reiman, "Liberal and Republican Arguments against the Disenfranchisement of Felons," *Criminal Justice Ethics* 24, no. November (2005): 3–18. An example of the second is Nicholas John Munn, "Capacity Testing the Youth: A Proposal for Broader Enfranchisement," *Journal of Youth Studies* 15, no. 8 (2012): 1048–62.

Beckham, and López-Guerra.[21] The latter two might be acknowledged as the best example of the sort of work my dissertation intends to carry out.

0.2 Argument outline

0.2.1 Chapter 1: The Symmetrical Core of an Asymmetrical Practice: Political Equality and Electoral Rights

The first paper of my thesis presents a normative analysis of the formal content of the RC. I present an overview of extant empirical practice in relation to legal qualifications for office, which formally define the set of its right-holders. The most common amongst these qualifications are those defined in terms of residency, criminality, and age. I compare the thresholds most commonly set for each of these categories and contrast them with those of the RV. Both rights tend to share the same set of qualification types, yet the benchmarks are usually set higher for the RC. In addition, there are cases in which countries establish additional kinds of qualifications for office, such as religious qualifications for example, which are not in place for the RV.

I analyse the logic behind this deviation in relation to the representative and state interests it is presumably meant to serve, particularly by tracing how this has been discussed within legal spheres. Such interests in general terms are those of a candidate's probity and representative capacity. I then argue in favour of this understanding of the RC as being necessarily a more constrained right than the RV, in relation to the need to satisfy certain conditions of quality of the right holders. Nonetheless, I then argue that the current empirical trend of setting the same formal restrictions as for the RV, usually with a higher benchmark and sometimes additional categories of restrictions, will not do the trick.

[21] Ludvig Beckman, *The Frontiers of Democracy* (London: Palgrave-MacMillan, 2009), López-Guerra, *Democr. Disen. Moral. Elect. Exclusions*.

Setting a higher age or longer residency requirements for office, for example, are not good proxies of representative effectiveness or of candidate probity. Their existence as such is arbitrary, and perhaps still in place on archaic historical grounds, rather than on empirical evidence of their effectiveness for isolating the type of candidates which representative democracies require.

What then follows from this is the fact that formal qualifications on the RC should at the very least be the same as those that exist on the RV. Moreover, a moral case for the formal expansion of the voting franchise has recently been made. I defend that, in face of the impossibility of formally qualifying the RC to protect the otherwise legitimate interests in candidates being of a certain quality, the same line of formal expansionist reason could be made for the candidacy franchise. Arbitrary hurdles on the RC unjustifiably widens the gap of those who can acknowledge themselves as full citizens in a relation of political equality with their fellow citizens and, as such, deter us from enhancing democratic and representative opportunities for all.

In conclusion, I claim in the chapter that the formal construction of the limits of the RC should be symmetrical with those of the RV. In other words, for the reasons explained above, the presumption of political equality that grounds the core of both electoral rights as political individual rights should have normative primacy.

0.2.2 Chapter 2: Democratizing a Fundamental Democratic Right: Substantive Equality of Opportunity and the Right to Candidacy

The second paper of the thesis looks in turn at the main hurdles on the individual RC set at an informal level, given the common trends of electoral practice in representative democracies today. These informal restrictions impact the substantive worth of the RC for a vast array of citizens. In other words, they impact substantive political equality for many

individuals who would otherwise be willing to run for office. Indeed, as recent empirical literature has shown,[22] the perception people have of their real opportunities to exercise the RC determine the set of people who in practice decides to run for office. I argue that what Rawls described as the 'worth of a right' is, in what concerns the RC is foreclosed for many formally eligible citizens. As such, I defend the need for affirmative action in order to substantially level the playing field for them.

I frame the issue in terms of being both a problem of political legitimacy, and a problem of social justice, and portray the depth of the problem through an analysis of the different stages within what I claim to be a four-tier structure at which the right to candidacy can be exercised. The impossibility of substantively granting an equal opportunity to exercise of the right to candidacy at the higher levels (to be nominated for office, and to take hold of office), I claim, should not deter us from the fact that everyone, or most everyone, could have substantive equality of access to it at the lower levels (to be recognized by fellow citizens as a potential office holder, and not to be punished by declaring yourself as willing to run for office.)

Discussions on quotas have centred on the need for their institutionalization as a quick fix for the need of securing a better quality of a certain type of representation- 'descriptive representation'- as a way to guarantee the inclusion of minorities, as holders of a group right to political representation, within government bodies. Yet, discussion on how the quota implementation might empower individual citizens as individual right holders of the RC has received very little attention, and I claim it can be a plausible way of addressing the political problems of substantial inequality of opportunity for the exercise of the RC that the chapter denounces.

[22] An example of this is Richard Fox and Jennifer L. Lawless, "Entering the Arena ? Gender and the Decision to Run for Office," *American Journal of Political Science* 48, no. 2 (2004): 264–80., and Richard L. Fox and Jennifer L. Lawless, "To Run or Not to Run for Office: Explaining Nascent Political Ambition," *American Journal of Political Science* 49, no. 3 (2005): 642–49.

Indeed, as I explained, one of the values upon which we ground the legitimacy of representative democracy is the protection of equality of political influence. Where there is the possibility or more substantive equality of opportunity for this influence, it should be sought. On the other hand, the equal political recognition entailed by substantive equality of opportunity to at least the first two dimensions in which the RC can be exercised empower the citizen for effective action in other areas of social life, and as such, an approach to social justice within a representative democracy needs to account for equal opportunity of access to the exercise of the RC wherever possible.

0.2.3 Chapter 3: Deliberating on representation: remodelling intra-party candidate selection

The final paper of the thesis draws from and expands the argument made on the first paper in favour of setting the boundaries of the RC over an interest in representative quality, which includes thr ability to comply with a certain desirable model of representation. In the first chapter, the case would be made against trying to secure those reasonable candidate traits by formally constraining the right through the kind of proxies currently established for that purpose, given the inefficiency of them for tracking those traits. The third chapter of the thesis will in consequence ask whether there is a way to place boundaries on nomination in a way that satisfies those interests of representative quality among the limited set of choices voters will be faced with at the ballot.

The chapter will make a case for a systemic filtering of candidates in accordance to those traits. It will then present a model of how that could be shaped, through the incorporation of advancements in deliberative democracy[23] in the last decade. On the one hand, given the plurality of views on the matter, both within academia and within the

[23] Particularly from the recent turn to systemic deliberation within this literature.

public arena, a path forward would seem to leave political parties with the task of determining what those traits are and filtering willing citizens in accordance to them. However, as I will argue, political parties, at least as they are shaped today, are not fit for the task. Indeed, parties' candidate selection is driven fundamentally by the party's goal of winning elections, and their strategic choice of candidates tends as such to be built upon superficial candidate marketability, rather than on a deep reflection on candidate quality.

Debates on representation and competence are left to academia, but for reasons of democratic legitimacy they should be held within political parties. Political parties, as funnels of candidates, implicitly take a stand on such questions, but explicit cross-party deliberation on the matter is called for, independent of their interest in candidate marketability. This, in turn, can be a way of legitimising political parties' role as funnels of citizens eligible for office, where their candidate selection procedures could not be the locus of such legitimacy.

1 The symmetrical core of an asymmetrical practice: political equality and electoral rights

1.1. Introduction

This paper presents a normative analysis of the formal content of the right to candidacy. I will present an overview of extant empirical practice in relation to legal qualifications for office, which formally define the set of its right-holders. The most common amongst these qualifications are those defined in terms of residency, criminality, and age. I compare the thresholds as are most commonly set for each of these categories and contrast them with those of the right to vote. Both rights tend to share the same set of qualification types, yet the benchmarks are usually set higher for the right to candidacy. In addition, there are cases in which countries establish additional kinds of qualifications

for office, such as religious qualifications for example, which are not in place for the right to vote.

I will then analyse the logic behind that deviation in relation to the representative and state interests they are presumably meant to serve, particularly by tracing how this has been discussed within legal spheres. Such interests in general terms are those of a candidate's probity and representative capacity. I will then argue in favour of this understanding of the Right to Candidacy as being necessarily a more constrained right than the right to vote, in relation to the need to satisfy certain conditions of quality in the right holders. Nonetheless, I will further argue that the current empirical trend of setting the same formal restrictions as for the right to vote, usually with a higher benchmark, and sometimes additional categories of restrictions, will not do the trick. Setting a higher age, or longer residency requirements for office, for example, are not good proxies of representative effectiveness or of candidate probity. Their existence as such is arbitrary, and perhaps still in place on archaic historical grounds, rather than on empirical evidence of their effectiveness for isolating the type of candidates which representative democracies require.

What then follows is the fact that formal qualifications on the right to candidacy should at the very least be the same as those that exist on the right to vote. Moreover, a moral case for the formal expansion of the voting franchise has recently been made. I will defend that, in the face of the impossibility of formally qualifying the right to candidacy to protect the otherwise legitimate interests in candidates being of a certain quality, the same line of formal expansionist reason could be made for the candidacy franchise. Arbitrary hurdles on the right to candidacy unjustifiably widen the gap of those who can acknowledge themselves as full citizens in a relation of political equality with their fellow citizens and, as such will deter us from enhancing democratic and representative

opportunities for all. In sum, I claim that the formal construction of the limits of the right to candidacy should be symmetrical with that of the right to vote. The presumption of political equality that grounds the core of both electoral rights as political individual rights should have normative primacy when formally qualifying them.

1.2. Legal qualifications on the Right to Candidacy

The recognition of the individual Right to Candidacy (RC), the right to run for elective office, as a human right has risen in the past decades. It was excluded from the Universal Declaration of Human Rights (UDHR) in 1948 but has since gained inclusion in other international treatises and agreements.[24] Saliently, it was included in the International Covenant on Civil and Political Rights (ICCPR) in 1966, whose 25th Article reads as follows (emphasis mine):

> *Every citizen* shall have *the right and the opportunity*, without any of the distinctions mentioned in article 2[25] and *without unreasonable restrictions*:
>
> (a) To take part in the conduct of public affairs, *directly or through freely chosen representatives*;
>
> (b) *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage* and shall be held by secret ballot, guaranteeing the

[24] For example, the OAS, "American Convention on Human Rights" (1969) , article 23 explicitly guarantees a right to "vote and be elected", and the "African Charter on Human and Peoples' Rights" (1981) article 13 claims more generally that all citizens have a "right to participate directly in the government of their countries". The "Universal Declaration of Human Rights" (1948), includes a more general right to hold office in government, without restricting this right to offices dependent on election. In addition, the United Nations, "International Convention on the Elimination of All Forms of Racial Discrimination (CERD),"(1969) protects "political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service."

[25] Article 2 of the "International Covenant on Civil and Political Rights,"(1976), in its first section states: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Legal Recognition of the RC has also gained track as a constitutionally protected individual right in western style democracies, though saliently not in the US. Some national legislations have remained rather ambiguous about it, neither clearly including it nor excluding it from their constitutions.[26] However, independently of the status of its legal recognition today, it is fair to say that there is an overlapping consensus on the status of the RC as a political human right,[27] and on its place as a central tenant of western style democracy, or more specifically, of liberal representative democracy.[28]

And yet, the academic work that can be found on it is both scarce and unsystematic. There is, for instance, need for more comprehensive work within comparative politics focused on the way in which the RC is interpreted and protected, restricted and qualified within and across different countries. This might be correlated to the fact, on the one hand, that not many policy recommendations with a focus on this right can be found either and on the other, that rationales used by courts to solve cases of conflict in its implementation tend to be very varied and, on occasion, in contradiction with each other. Let me give a few examples of the latter.

At least two cases have been presented before the Interamerican Court of Human Rights adducing violations and unjustified burdens on the RC, recognized in the

[26] At least 42 of the currently existing 195 states include within their constitutions an express right to stand for election, and at least a further 20 include a more general right to access public office in general terms of equality. See Alecia Johns, "Conceptualising Political Candidacy as a Human Right" (University of Oxford, 2014), Chapter 2.

[27] What I will refer to as the Right to Candidacy is a concept that is not referred to through identical terms in the relevant legal literature. As is the case in the ICCPR, it is sometimes referred to as the "right to be voted", "right to be elected", or more specifically, "the right to be elected for political office." It is also sometimes called the "right to run for office", or the right to "stand for office." Sometimes it is stretched to the "right to hold office".

[28] Alecia Johns has made a clean-cut case for this to show that it is already a customary right within international law in "The Case for Political Candidacy as a Fundamental Right," *Human Rights Law Review* 16, no. 1 (2016): 29–54.

Interamerican Covenant on Human Rights. In *YATAMA v. Niaragua*, the indigenous political association YATAMA argued that their inability to register candidates for the ballot, insofar as they were not a political party, constituted a fundamental violation of their candidacy rights. The case was resolved in their favor, on the basis of the violation of their potential voters' free will.[29] In *Castaneda-Gutman v. Mexico*, the eligibility condition for office constituted by membership in a political party was also challenged, yet this time the court declared that such a requirement, as specified at the time by Mexican electoral law, did not constitute a violation of the right to candidacy, insofar as party structures were deemed a reasonable way to exercise such a right.[30] In both cases, though resolved under different rationales, the tension between the individual right of a citizen to run, against the need of securing adequate schemes of representation comes to light.

At a national level, the Mexican Supreme Court of Justice determined in 2013, that the proposal for reform of the Constitution of the State of Durango was not unconstitutional, as had been alleged, insofar as it established a literacy requirement on the right to run for the local house of representatives. Such a requirement was deemed reasonable by the Court, insofar as literacy was deemed a necessary condition for the adequate representation of the electorate, and for the overall adequate performance of the duties of office, in accordance with the public interest and proper state development. This was ruled even when discrimination towards marginalized groups (both of willing candidates and their voters) had been adduced.

The *General Comment 25 to the International Covenant on Civil and Political Rights* leaves a fairly open rationale for the distribution of the RC in terms of its

[29] "Yatama vs Nicaragua" (2005).
[30] "Castaneda Gutman vs. Estados Unidos Mexicanos" (2008).

restrictions having to be *reasonable* and not discriminatory and yet gives no light as to how to proceed when it clashes with the rights of voters or the proper function of the state.[31] It could seem, upon superficial review, that after the decades of civil rights fights across nations and the consequent legal recognition of the RC in one form or the other, these theoretical resources would have been fixed in an unproblematic way.

The aforementioned cases, which mean to serve as examples rather than to exhaust the issue, testify to the contrary. However, not only is there an important disparity amongst legal frameworks on the way this right is understood and qualified. There is also a virtual silence on the matter on the part of political philosophers. Within this literature John Rawls is perhaps the author who has gone the furthest in analysing the matter. Rawls considers the RC (independent of the Right to Vote) as one of the basic liberties encompassed by his first principle of justice and states that its morally legitimate restrictions are 'qualifications of age, residency and so on'.

The rationale behind such legitimacy is given in terms of those qualifications being '*reasonably* related to the tasks of office' (emphasis mine). The condition for such restrictions not being discriminatory is that they will fall "evenly on all persons in the normal course of a lifetime".[32] Rawls, however, comments no more. As such, further explanation of what that reasonableness would entail, how it could be justified, and how it might guide judgments over other sorts of restrictions is lacking. There is need for a clearer sense of which features of the "tasks of office" provide the relevant ground for the normative criteria we might need, and whether, and why, this would justify burdening the otherwise right of every citizen to run for office.

[31] "General Comment No. 25 to the International Covenant on Civil and Political Rights" (1996).
[32] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p.196

For Charles Beitz, one of the few other authors to have considered the matter, the right to hold office (for which the RC is an opportunity for), is 'properly conceived as an opportunity for service and self-development, analogous, perhaps, to the right to choose a career.'[33] Yet, unlike Rawls, guaranteeing the overall fairness of the agenda design, is for him, an important consideration when choosing who can be allowed to run. As such, the RC is not considered by Beitz a fundamental political liberty, albeit it can carry some benefit for the person who might come to hold office, just as many other social positions. As such it can be restricted in the interest of a fair agenda formation.

In general, within democratic constitutional frameworks, and international agreements the right to run and hold office is presented in tandem with the right to vote as electoral rights. It is considered the passive right to suffrage, where voting is the active right, and is considered alongside it as one of the paradigmatic rights that define a democracy.[34] In consequence, their distribution tends to be established in roughly the same terms, following the rationale of inclusiveness that tends to be associated with modern democracies. This fact might have been the result of the historical evolution of the distribution of these rights in the past two centuries given that the fights for the inclusiveness of different groups were usually fought and won together under the notion of "full suffrage rights".

[33] Charles Beitz, *Political Equality: An Essay on Democratic Theory* (Princeton: Princeton University Press, 1989), p.174.

[34] An example of this is the way in which indexes such as Freedom House present their listing of more and less democratic countries in relation to the inclusiveness and factual functionality of their electoral practices in which both rights are fundamentally embedded. A further example is the United Nations', "Declaration of Principles for International Election Observation" (2005), which refers to the right to stand for election as an "internationally recognized human right". Paragraph 2 states that "everyone has the right and must be provided with the opportunity to participate in the government and public affairs of his or her country, without any discrimination prohibited by international human rights principles and without any *unreasonable* restrictions. This right can be exercised directly, by participating in referenda, standing for elected office and by other means, or can be exercised through freely chosen representatives" (emphasis mine).

Philosophical theorizing since the Enlightenment has worked on the reasons why the right to vote should be universal (in the sense of being justly claimed by all citizens in equal measure, as comprised in the dictum 'one person, one vote.'). As such there is arguably today a wide overlapping consensus on the matter amongst political theorists,[35] which is also shared by the general public on a global scale. Yet, it is far from clear that the same can be said about the right to candidacy. What is more, the past two decades have seen an explosion of arguments in favour of lowering down, or eliminating completely many of the current types of legal qualifications and restrictions that still apply to the right to vote.[36] Given the significant normative similarity that the RV shares with the RC as fundamentally rights to political participation, and in particular, participation in the government of one's country, it is surprising, to say the least, that similar rationales have not expanded to include the latter as well within political philosophy.

In 180 BC the 'Lex Villia Annalis' was passed in Rome to regulate the minimum age required for a senatorial magistrate candidate. That was the first time, as far as we know, that an age restriction was introduced to a candidacy for political office. Fast forward and today, no electoral democracy allows anyone under 18 years old to run for office. This minimum threshold is usually higher, the higher the office in question. A famous example is the requirement set by the US constitution for anyone wishing to be a

[35] An exception to this is Jason Brennan, who has argued for the possibility of justifying an epistocratic distribution of the right to vote. *Against Democracy* (Princeton: Princeton University Press, 2016).

[36] The following are notorious examples of these sort of works. Some focus on specific restrictions, while others provide a more all-encompassing normative framework with which to evaluate RV qualifications. David Estlund, for instance, has argued against any types of epistemic-based restrictions on the grounds that their introduction would only be morally justified if it could be accepted by all reasonable relevant points of view, which, he argues, is impossible. Estlund, *Democratic Authority: A Philosophical Framework.* There has also lately been a growing interest on RV restrictions fuelled by recent events both on the right of felons to vote, and on the right of children to vote. Examples of the first are: Joseph Kleinig and Kevin Murtagh, "Disenfranchising Felons," *The Journal of Applied Philosophy* 22, no. 3 (2005): 217–39, Claudio López-Guerra, "Disenfranchisement on the Basis of Felony Convictions," in *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (Oxford: Oxford University Press, 2014). Finally, two monographic works on voting restrictions in general are Claudio López-Guerra, *Democracy and Disenfranchisement: The Morality of Electoral Exclusions* (Oxford: Oxford University Press, 2014), and Beckman, *The Frontiers of Democracy*..

candidate for president to "have attained to the Age of thirty five."[37] Having the required age is not enough, however. If one wants to run for office, further formal requirements need to be met. Keeping with the example, in order to be a candidate for president of the United States, one needs not only to have celebrated her 35th birthday, but also to have lived at least 14 of those years in the country. Analogous residency restrictions for political office can be found in most constitutions and electoral laws today.

Empirically, there exist further qualifications for office which tend to be similar across countries today, beginning with the criterion of citizenship, as is established in the ICCPR, and, generally, explicitly banning mental incapacity.[38] There are other barriers to ballot access such as that of non-criminality (currently being or having been in jail), or country of birth (i.e. having to be a natural citizen of the country), as is also the case in the United States, or the requirement to belong to, or at least be nominated by, a party. Religious qualifications are, in addition, still a requirement for office in some countries.[39]

Overall, however, as has been evinced by the court cases discussed above, and by the ambiguity that the wording of the ICCPR, reproduced across legislation across the world, in relation to the acceptability of 'reasonable' restriction for office, there is an urgent need for a clarification of what that criteria might consist of. What is particularly puzzling however, is that legal qualifications on the right to candidacy are generally set at a higher threshold than the ones it otherwise shares with the right to vote. Indeed, in many countries, age, residency and criminality, for example, are today legal restrictions on the RV. However, the tendency is for the RV to be qualified with similar restrictions,

[37] "Constitution of the United States," (1778).Article 1, Section 2.

[38] See for example, the General Comment no. 25 to the International Covenant on Civil and Political Rights: The right to participate in public affairs, voting rights and the right of equal access to public service' (Art. 25).

[39] On the one hand, for example, the Mexican Constitution bars from political candidacy all those who are ministers of a cult or have an ecclesiastical status.DOF, *Constitución Política de Los Estados Unidos Mexicanos*, article 82, paragraph 4. On the other, the existence of 26 seats reserved in the House of the Lords of the United Kingdom to bishops of the Church of England could be read as a quota that restricted the access to those seats to the rest of the population.

and yet for these the benchmark is higher (as can be seen in relation to the age of eligibility for presidency in the United States).

On the face of this, this article will explore two interconnected questions. On the one hand, I will ask on what grounds could restrictions on the right to candidacy be accepted, particularly where they deviate from those imposed upon the right to vote. I will then ask whether the sort of legal restrictions empirically existing on the right to candidacy can, as I have been discussing, in particular be morally justified within liberal representative democracies today. Before delving into the matter, however, let me make a clarification.

The political system that I here call western-style democracy, or more abstractedly, liberal representative democracy, and which is considered to have been adopted by a significant majority of countries in the world today, is actually an umbrella term for a set of different types of political organization. A salient distinction within this is whether they constitute parliamentary, or presidential systems, for example. The consequence of such a plurality, is that the right to candidacy is differently embodied within different countries.[40] This situation, however, is shared by the right to vote. For the purposes of this work I will, as many works on the justification of the right to vote, and democracy more generally do, obviate such differences in terminology, and the specificity of their application. So, by stipulation, in relation to what is relevant for this paper the RC can be broadly defined as:

[40] To this one could further add the different models of relationship that are or might be expected from officers and elected offices, as the different theories on models of representation show, from the paradigmatic delegate- trustee debate, to more recent works such as: Philip Pettit, "Representation , Responsive and Indicative," *Constellations* 17, no. 3 (2010), Melissa Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton: Princeton University Press, 1998), and Michael Saward, "Shape-Shifting Representation" 108, no. 4 (n.d.): 723–36.

the political right that involves the claim to be eligible as a potential holder of an office, and the liberty to declare yourself willing to take the duties of office. The actualization of the specific potentiality to hold power is subject to the selection, through voting mechanisms, from the population, or a part thereof, that would be subject to such power.

This conceptualizing of the RC aims to be flexible enough to capture real political contextual variations, and at the same time specific enough for us to unambiguously carry the normative work that follows. It is, important to say that this will not be legal theory work, but philosophical. This implies that the reasoning is made at a higher level of abstraction. Wherever legal documents are mentioned, they merely serve to illustrate the matter in its relation to political reality. As such, the conclusion presented, as constrained as it will be, is not meant to serve as a prescription on anything for any existing polity.

1.3. The right to candidacy as a more stringent right than the right to vote

What I so far have described is a problem common to constitutional drafting or reform in many of today's democracies:[41] that of whether, and how, the right to candidacy should be qualified in practice. Yet in order to answer it we first need to clarify a higher order question, that of the basis on which we would be justified in qualifying it. In what follows I will track an answer to this question first by discussing the rationales that seem

[41] I am not claiming that these nations are empirically facing this question now (although some of them have, as I have previously discussed). Rather, that given the lack of a clear rationale for the existence of qualifications on the RC today, other than a historical genesis, there is upon them the burden of their justification. Particularly on the charge of their being arbitrary, and perhaps discriminatory, in a parallel way of what has been claimed in relation to the right to vote.

to underlie existing qualifications. I will question whether, in the abstract, those rationales stand, and then, determine the relation between such an answer and our practice.[42]

Age qualifications, and particularly at the higher threshold in relation to the right to vote at which they tend to be established, seem to exist for the sake of guaranteeing that a given political candidate has achieved a certain level of maturity, or life-expertise, as seems required for an adequate performance in office. A similar reason would seem to support residency restrictions: if someone presents herself as willing to take office, having lived in the place she is running for apparently constitutes a minimal guarantee of her having some kind of first-hand experience of that place, her fellow inhabitants, the problems it faces, the resources it has available to solve them etc.

Life-expertise, and knowledge of the polity, are what we could call "minimal quality- securing" reasons for office-qualifications. More specifically, they seem to work as proxies for those. Other restrictions on political candidacy of this kind might exist on electoral democracies today, although not as evenly widespread as age and residency. The single other type of restrictions that probably best represents this group of restrictions is that of educational qualifications. These would range from the requirement of basic literacy, as was discussed above, to the need of having attained a certain level of formal education in order to be qualified to run for office. The absence of a criminality record, as a qualification for office, on the other hand, seems to be based, at least,[43] on the idea

[42] A brief comment on this. Decisions in constitutional engineering are (ideally) the result of ethical reasoning (as are known and understood) as applied to a set of empirical circumstances (as are known and understood). The taking of those decisions is the job of constitutional drafters and reformers. However, part of the job of the political theorist is to provide theoretical models upon which those particular decisions can be based that can shed light upon those decisions. So, it is important to notice, what is true for the model, might not be true for the specific decision, because there might be further relevant particular considerations that might not have been taken up by the model. To do this, theorists identify commonalities between the particular ethical problems as faced by the political decision makers, and look to identify and isolate and generalize the common empirical data relevant to them. Once that has been modelled, they articulate an answer to that general problem by identifying what are the relevant ethical principles that should apply to them, and how they would do so.

[43] Perhaps a case for criminality qualifications for office could also be based on the idea of disenfranchising felons and ex-felons as a method of punishment, or as necessary manifestation of their breech of the social

of securing certain moral probity on candidates. A further proxy of moral probity seems to be the prohibition of candidates having dual nationality, as was recently at the root of a political crisis in Australia,[44] at the very least established to prevent conflicts of interests, or even treason.

Prima facie, the existence of 'minimal quality-securing' qualifications on political candidacy does not seem very problematic. It can even seem common-sensical to have them. But even conceding this, it is not obvious that they should be set at a higher level than those for the right to candidacy. They are neither effective nor necessary. The abstract case for the right to candidacy being a more constrained right than the right to vote, can be made. But current restrictions, as they stand, do not seem to be justified. Indeed, the general statement that certain types of expertise and knowledge are necessary to adequately carry out the tasks of political office is hardly debated. It was as accepted in 180 BC Rome, as it is today. Apart from that, however, there is room for disagreement in much else. First, there is no one single answer for what precise type of expertise and knowledge are required for the tasks of office. Second, were an answer to that first problem to be signalled out, the problem of how to determine whether someone has it will surface.

This concern is obvious when age restrictions are contested. While it is generally acknowledged that 'life expertise' is necessary for office, it is not clear what fulfils the idea of life expertise. Moreover, even when we might perhaps come up with a rough conjecture of what that is, it is harder to then know whether having lived a given number of years on earth (rather than less, or perhaps more) can be used to correctly identify those

contracts. Such arguments have been espoused in favour for felony restrictions on the right to vote, and the case could be expanded for these as well. Yet, for the purposes of this paper I will focus on what a proxy for criminality restrictions seem to be.

[44]"Five Australian Politicians Ousted over Dual Citizenship," *BBC News*, May 18, 2018, www.bbc.com/news/world-australia-44049929.

who have attained such expertise. The difficulty of both these things lies behind, for example, youth activists' view that existing age restrictions on candidacy are little more than arbitrary numbers.[45]

Unless we were able to directly trace that a trait such as being under 35 correlates with inability for hard decision making, of the kind expected of the president of the United States, that benchmark stands as nothing more than an arbitrary, even archaic, restriction that should have been gone along with property or only male restrictions a while ago. Perhaps if designing a test to measure certain decision-making capacities turned out to be possible, we should then substitute age restrictions for test restriction in this case. Much would be necessary to arrive at a conclusion like that. The necessary empirical science which is to be carried out would certainly be challenging. But assuming the science is sound, there are, nonetheless, two further reasons for disagreement. First, these sorts of studies should always be read against the background of what is being considered adequate office holding, which itself leaves room for ample discussion.

In truth, we might indeed need stronger expertise restrictions than the ones currently in place, at least if we look at what the stipulated tasks for specific offices are. However, the reason there is room for disagreement is not on these kinds of facts, such as which house should be responsible for passing a certain budget (though of course there might also be disagreement in that), but disagreements of a deeper, or more abstract nature. This is, on what the nature of office holding consists in. The standard answer is that of their being 'representatives', but the nature of representation itself is today a hotly contested matter. But even assuming that debate was settled, there is a second, reason for

[45] John Seery has taken these complaints to heart and built the case for lowering age for candidacy restrictions in the United States. Seery, *Too Young to Run? A Proposal for an Age Amendment to the US Constitution*.

disagreement. And this is the extent to which securing a given quality of candidates in relation to the above would be enough to justify the exclusion from the opportunity to run for office to those citizens that do not pass the quality benchmark. This burden is particularly hard in democracies, where the presumption is political equality amongst the citizens, (which as regards to the right to political candidacy seems to be determined, as systems are built, by the equality of opportunity to run for office.)

That problem, in other words, is how to determine a just procedure for candidate selection on the face of the need for expertise (a literature which is currently on the rise within political theory)[46] in certain areas of high-level decision making. The matter is not about how voters choose which candidate will win. It is rather about how the candidates they get to choose from are determined, and whatever else happens informally (which also involves situations of justice), the rules of the game get settled at the constitutional level, which is a first place to look at. This just procedure will need to consider what is due to each of the parties involved.

Bottom line, the dilemma that is to be faced is what should be done when it seems that political expertise is necessary for adequate decision making as corresponds to those roles, and yet there is no way to establish a future relation between preparation and decision making, and, even where that could be done, selecting people to fill offices on that basis seems to violate both the free choice that seems to be due to citizens as voters, and the equal opportunity for office holding that seems due to candidates as citizens.

The question of the justice in the distribution of the RC and the justifiability of burdens on it is both particularly puzzling and particularly challenging when compared to similar work that might be done on other rights. The RC seems to be an individual right

[46] See, for example the work from EPISTO Project, "Why Not Epistocracy ? Political Legitimacy and ' the Fact of Expertise ,'" 2010.

that should presumptively be protected by the state-similar in this sense to rights such as the right to education, to freedom of occupation, or to health- while at the same time-unlike these- being itself part of the structure of the state. It is, indeed, a mechanism for the allocation of positions of power within a state. Because of the latter reason, it can be defended as a more stringent right than the right to vote. However, given both the inefficiency of determining the necessary traits for adequate office holding, and of representing itself, along with the overall empirical inability to determine that certain proxies would adequately trace those traits, assuming the first debate was settled, it seems that there is not a strong case for enforcing more stringent restrictions at a formal legal level on the right to candidacy than at least those we have in place for the right to vote.

1.4. The Right to Vote and the Right to Candidacy as Equally Fundamental Political Participation Rights

So far, I have claimed that, even when we could make a case for filtering ballot access in terms of a person's expertise, experience or even representative capacities, the sort of proxies we have in place for allegedly doing so are not correlated with guaranteeing either of those. As such, I have defended that such restrictions should at least be lowered down to make the right to have similar burdens on both rights, rather than having the right to candidacy carry a greater load. I have also hinted that some restrictions might need to be eliminated completely, paralleling arguments that have been made in relation to the right to vote. Within this final section I will delve further in establishing the normative criteria over which this conclusion is fully reached. Indeed, the cases should be threaded carefully because as I have claimed, the shape of the right to candidacy does hang on concerns over adequate office holding and representation. It is merely because of our inability to determine both what exactly both these kinds of activities consist on, and the

consequent empirical tracing of the personal traits that would be predictors of it, that the sort of existing burdens on the right to candidacy are unjustified.

However, we need to say more on the reasons why burdening the right to candidacy in such ways, no matter how well intended, though misguided, the establishing of qualifications might be, would constitute a serious harm on the population that through those means would be excluded from the possibility of running for office. The argument for this final conclusion builds on the fact that participation, or the opportunity for participation, is in essence a fundamental right, and that it be open to all those entitled to it is fundamental condition for the legitimacy of the system. This reasoning guides the presumption of citizen universality upon which the right to vote is distributed. And, upon our current material impossibility for the institution of direct democracy, the right to candidacy is to be equally understood as a fundamental political participation right. Being this the case, unjustifiably burdening it harms those excluded from it, and puts into question the legitimacy of the system.

In other words, unless we could know something more on the conditions necessary to legitimately curtail the right to candidacy at a formal, legal level, as I have claimed we cannot do, the basic core presumption for the distribution of both rights should be symmetrical, based on a principle of basic legal equality of opportunity. The argument I want to make can be formally presented through analogical reasoning:

1. The RV and the RC share equal normatively relevant traits as participatory rights within a representative democracy
2. It has been argued to the satisfaction of most, and we've reached wide overlapping consensus on that the RV should be universal (shared equally by all humans, even if exercised within their country of nationality) as a participatory right
3. Ergo, via inductive reasoning, the RC should also be universal

The basic equal trait is the presumption, at least sat the formal legal level, that all persons (or citizens as the accepted precondition) are fit for participating in the politics of their country in the different ways that the existing mechanisms for political selection allow thus. Unless we could prove the contrary, the presumption holds. The exercise of the possibilities for participation that both rights open, in the most minimalistic account, asks for the same basic capacities: reasoning, having a will of your own, minimal capacity to judge over what is best for the common good etc. The underlying idea behind this Equal Participation Analogy (EPA) is that equally direct participation of all citizens in law-making and policy design, is not possible due to empirical restraints, the only way to legitimately substitute it would be by ensuring that those same citizens to whom direct participation could have been said to be due, are all equally entitled to the opportunity not only of selecting those that will make laws, and design policies, but also of being themselves selected for it.

In other words, it is accepted that the Right to Candidacy should be universal, given that the right to vote is already accepted as universal, *because* the RV and the RC are *similar enough* in a trait relevant to the distributive rationale, which has already been accepted as required for the RV: universality. To understand why there is a perceived similarity relevant to the distributional rational which makes the EPA plausible, it is necessary to understand the grounds on which the universality right to vote is justified (with qualifications on it carrying the burden of proof against that presumption).

The literature on what I have called the distributional rationale for the right to vote in substantially intertwined with the normative literature on democracy, or at least has been for the past decades. Indeed, the mainstream conception of democracy today, in philosophical literature, and perhaps even more so in the social sciences literature and by the general public, is that it is fundamentally synonymous with the universal right to vote.

For this reason, the place to analyse the philosophical justification of voting universality. As such, the reasons that can philosophically justify broad overlapping consensus on the universality of the RV, can today be extracted from the arguments in favour of democracy. We can distinguish two sets, that trace the general style of arguments in favour of democracy available to us:

On the one hand, there is the group of what is known within the literature in democratic theory: the 'extrinsic arguments', or the 'consequentialist arguments' for democracy. The claim is that people are entitled to certain consequences, or states of affairs, such as peace. And the one person one vote situation has been proven to guarantee peace and prosperity. So, people have the right to vote as derived from their right to peace, but not by any intrinsic quality of the right to vote to which they are (or are also) entitled. But if the justification cannot be made in terms of intrinsic value of the one person one vote scheme, then if any other scheme brought about peace and nourishment, then we should prefer that.

This group of arguments is characterised by the fact that the case for democracy is made over benefits which lay outside of the democratic process itself. In other words, the recognized benefits of democracy are to be found on the consequences brought about by a political process in which voting is universal. Examples of this type of arguments democracy are Amartya Sen's claim that democracy is desirable because no democratic country has ever experienced a famine,[47] or the fact that no democratic countries have ever declared war against each other. Another example of this sort of argument is John Stuart Mill's famous claim that democracy was desirable because it served to educate the people and generate a sense of political duty amongst them. The most prominent argument of this kind in recent years has been made by the so-called 'epistemic

[47] Amartya Sen, *Development as Freedom* (New York: Random House, 1999).

democrats'. These latter argue that democracy is valuable because of truth tracking capacity.[48] That is, all else being equal, democracy is valuable because it is likely to track the truth of the matter.

On the other hand, so called 'intrinsic arguments' for democracy argue that the right to vote should be universal (in other words, we should have democracy, so understood) because there is value in the democratic procedure itself, as characterized by a system of universal voting, independent of the results. That is, that every citizen has a right to vote is valuable in itself, independent of the consequences it might produce. Amongst the reasons adduced to support this claim we find the fact that the 'one person, one vote' distribution puts citizens in a situation of numerical equality amongst each other. This numerical equality in relation to the weight of one's vote is valuable itself as the minimal sort of political equality that can and ought to be pursued. It is in a sense a particular incarnation of the equal right to participation which we all share and gives a very concrete way of pursuing it.

Furthermore, it can be added to this, or independently argued, that having an individual and equally weighted right to vote is due to every citizen as adult rational and autonomous agents, with dignity and/or with moral and social capacities that are to be acknowledge and respected by the polity, as an extension of her capacity to decide over her life, because she needs to live in social contexts.

A salient sort of intrinsic argument claims that a democratic procedure is itself necessary in order to justify the use of power by the state. The claim is that (pace epistemic democrats) either there is no way of 'knowing' the best answer of what needs to be decided in the polity because we are incapable. Or moreover, that there is no right answer to the matter because what is ultimately being traced politically is a moral problem and, it

[48] The canonical work on the matter is Estlund, *Democratic Authority: A Philosophical Framework*.

would be argued, moral claims are not truth-apt. Furthermore, even assuming there were right answers for our political problems, and we were somehow able to trace them, (via divine revelation for example), we cannot 'impose' such a truth over others. Possession of truth, and possession of political authority are separate and distinct matters, with their own criteria of justification. For political authority to be justified, every person's reasonable moral standpoint needs to be considered. In practice, the democratic process is what can best secure this. This presupposes they are capable of that, and this same presupposition does not hold in the case of holding office, so it is not wrong to have to obey those in office, even if I had no right to be one of them.

The debate on the justification of democracy (understood in this context as 'universal voting'), the main positions of which I've just presented, is alive and thriving. My interest here is not to take sides of either position. Rather, my aim is to show how each of these might justify universal candidacy rights, as it assumed in the Equal Participation Analogy. In other words, I aim to flesh out the different ways in which the analogy can work. In other words, supposing any of above claims for democracy as universal voting were true (it is, as I mentioned, accepted by reasonable consensus that at least one of them, is true), then via the perceived similarity with the right to vote, they could also be applied to universal candidacy, per the EPA. In other words, those different understandings of democracy's value provide different iterations of the EPA.

To construe an extrinsic argument for universal candidacies that was analogous to the argument for universal voting the consequences positively attributed to universal voting would need to be attributed to universal candidacy as well. Under this line of though, the analogy would imply that the existence of universal candidacy could be proven to account for such things as the absence of famines within democratic

countries, the lack of wars between them, the political culture and conscience of their people, etc. Else, it could be claimed that having universal candidacy also had truth tracking properties, as necessary for the political decision-making processes.

Extrinsic arguments for democracy admittedly are based on empirical results, or else on mathematical necessity predicated upon empirical conditions, as is the case for epistemic democratic claims that draw support from the Condorcet Jury Theorem.[49] In a similar line, if this style of justification for universal voting, where to be also adjudicated to universal candidacy, empirical data would be called for. This data would need to show that there is a link between universal candidacy and the required results in conjunction to the right to vote. To my knowledge we currently do not have this kind if data available, perhaps because political science studies has also lacked a focus on the right to candidacy. Perhaps the more likely positive consequence of universal candidacy would be something along the lines of the Millian argument that linked universal voting with citizenship education. It does seem plausibly indeed, that universal candidacy would bring about similar pedagogic effects on a citizen. But, as an extrinsic way there are no reasons to say this is due to you, where other conditions might satisfy this. As such, I believe that the strongest way to build the EPA will be over intrinsic arguments for democracy, that is, the equal value of political participation.

The intrinsic value iterations of the second premise of the EPA could plausibly be developed as they would concern the right to candidacy for the analogy to succeed. The argument of equal respect in relation to the right to vote stated that the best way to respect citizens as equally autonomous moral agents, entities with a certain dignity etc, is

[49] José Luis Martí, "The Epistemic Conception of Deliberative Democracy Defended," in *Deliberative Democracy and Its Discontents*, ed. Samantha Besson and José Luis Marti (Aldershot: Ashgate, 2006), 27–56.

by giving them the right to participate as equals in their community, and that the right to vote was an instance of such participation. It could equally be said that universal candidacy as a type of political participation is equally entailed by the normative idea of respect to citizens as equals in moral autonomy and/or a certain dignity etc. The argument of liberal neutrality in relation to citizen's conceptions and moral views could also be extrapolated to the right to candidacy by saying that is that there is no right answer as of which of the possible candidate holds the right political views, or the best solutions for the political problems, so a fair procedure under the criteria of neutrality to their political views would entail including them all in the pool of candidates eligible for candidacy.

Put in other terms, the right to vote, within representative democracies, is derived from a positive right to be represented. This comes from the basic idea of democracy, as etymologically signified, as "power to the people", once it faces the need for that power to be mediated within indirect democracies given, among other things, a given size of a population. But that positive right cannot be fully satisfied for all due to scarcity and feasibility, given that many interests crash with others and not all can be satisfied at the same time. Thus, what the right to vote provides is, in the end, the liberty or negative right to enter the competition for representativeness. And that is what we consider that should be universal, in addition to the fairness in the competition. This is in the end what is implicit in our current understandings of universal franchise as democracy, and of the way the arguments we make of democracy apply to it.

To put things more explicit, our arguments for democracy are not meant to support, or not only, Greek style democracy, understood as universal direct participation in the decisions that the ruling of the polis asks for. Rather, what we understand to be supporting when we defend democracy today, is universal participation in the selection

(or “election” as we call it, insofar as within liberal democracies the selection is based ultimately on the criteria

of free choice) of those who will make those decisions. Citizens, in their capacity as voters will not make such decisions directly themselves. And the way in which those arguments for democracy, as detailed above, will best work is through the assumption fo an underlying right to the opportunity (insofar as it cannot feasibly be guaranteed for all), for representation of our positions, interests, wills or (whatever we determine) to be the subject of representation. What is presumably being voted for is a certain political agenda (which itself is the crystallization of political views), under prudential considerations of how likely a given candidate is to bring it about.

Extrinsic types of pro-democracy arguments are based on the results brought about as consequences of the democratic process. Such results are predicated upon the process of selecting an agenda, and judging the likeability of a given person to fulfill it. Pro-democratic arguments based on factual claims as the absence of war with other democratic countries, or the inexistence of famines within the democracy in question being the consequences of democratic processes are presumably predicated upon the agendas that have factually won, and their actual fulfilment. The political education of citizens that seemingly would result from their participation in the democratic process through voting, is also presumably predicated upon the exercise of their reasoning in relation to political agendas, and the likeliness of political candidates to fulfill them. That this is the case is perhaps even more obvious for epistemic arguments for democracy, which praise voting mechanisms for, among other things, their truth tracking qualities. And the truth, in the case of indirect of indirect or representative democracy, would indeed be what the best agenda for a given country is, measured against the likelihood that the candidate ‘representing it’ will fulfill it.

Intrinsic arguments, on the other hand, are related to the fairness of the competition for representation itself, and they link this procedural fairness with the overall justifiability of the government selected to be imposed over both winning and not winning citizens. And here the question gets more interesting insofar as we can extend it to having some other person (rather than position or agenda) rule over you, even when you did not have the possibility of being in the contest, which is what the same argument as applied to the right to candidacy via the EPA would imply.

What we mean when we talk about representative democracies is that the political decisions are been taken by the people, or, rather, that they are been taken by the people through representatives. Within this framework then, the selection is allegedly not of someone who will rule for you, as a Shumpeterian model of democracy[50] would suggest, but of someone whose act of decision making over political matters is a proxy of what would be the constituents decision making act. How this happens, or should happen, can certainly be debated: whether the representative is a symbol, and if so in what way, whether his decision- making should expand over her own person and be based upon what are or what se thinks would be her constituents modes of reasoning, or desired results for what she is deciding for etc.

But candidates are not robots of preference filtering machines, there is still something about them ruling that is not completely gone in the possible forms of representation that we so far know to be possible for us. There is still something of their will that will be imposed upon us (notice this is also a case with the right to vote). In this sense, what seemed to be possible applications of right to vote arguments, to the RC exposed before allow us to say that the right to candidacy is also based upon a universal citizen claim to representation, and as such normative consideration for it should be no

[50]Joseph Shumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Row, 1956).

different. The presumption of universality for right to candidacy is a requirement of representative democracy as we understand it today. It shares this symmetrical core with the right to vote and, as such, the practice of their qualifications at the legal, formal level, should be the same.

2 Democratizing a democratic right: substantive equality of opportunity and the Right to Candidacy

2.1 Introduction

The Right to Candidacy, or the right to run for elective office, is a paramount democratic right. Having it, along with the right to vote, is broadly what defines democratic citizenship today. In other words, the right to candidacy is recognized, both by political theory and political science, as one of the fundamental freedoms that should be enjoyed by citizens if a given political organization is to be called a democracy.[51] However, as things are, it is a fundamental democratic right, and a defining trait of democratic citizenship, only in a very formal sense within most, if not all,[52] of so-called 'democratic countries' today. Indeed, it is an unfortunate fact that within these latter, the right to candidacy can be said to be little more than an 'in paper' political freedom for most of their populations, for, as I will argue, most people are not in a position to exercise them, even if they wanted.

Yet, how could it be a 'democratic right' in any other sense than as a properly codified legal protection? And, moreover, why should it? Let me explain. Democratization, the transition of countries to what would be recognized as a democratic form of political organization, has been one of the major (if not *the* major) political trends of the last century, and it has accelerated significantly since the end of the Cold War. As a result, the right to candidacy (henceforth RC), can today be found at the core of the

[51] A canonical statement of this idea was put forward by Robert Dahl, who articulated a generally accepted listing of what he terms the "procedural minimal" conditions for modern democracy (his 'polyarchy') to be such. The fourth, among a list of seven, asks that "Practically all adults have the right to run for elective offices in the government." Robert Dahl, *Dilemmas of Pluralist Democracy* (New Haven: Yale University Press, 1982), p.11.

[52] This will hang on the degree to which the case I make below empirically obtains or not. I do not presently have the resources to make that claim more specific. My hope is, however, that the theoretical resources I develop in this paper can provide a basis on which to frame the relevant empirical studies on the matter.

principles for political selection in all the countries recognized as democracies (more specifically, as 'representative democracies') today. It has, furthermore, been increasingly recognized *explicitly* as a fundamental political right within myriad national constitutions and international treatises around the world.[53]

This worldwide trend towards increasing *formal democratization,* as we may call it, has been accompanied by parallel substantive transformations of society. These social transformations include the increase of wealth, the increase in accessibility (in different measures across countries) to the material resources necessary for life, the expansion of health services etc. Along these, we have witnessed the massification of information and communication resources, and the resulting homogenization of many aspects of culture. And, what is more, there has been an overall increase in equality of opportunity across societies to access and move between across and upwards different social roles and positions.[54]

The causal relationship between the latter and processes of *formal political democratization* are complex. It is not clear whether these social transformations have been the result of political democratization, nor how much of them can be attributed to political change. Whatever the answer, what is worth noting for our present purpose is that for a good time now these trends have at the very least run in parallel and, as a result,

[53] For the most comprehensive survey of these constitutions and international treatises of which I am aware see Alecia Johns' DPhil dissertation, "Conceptualising Political Candidacy as a Human Right" (University of Oxford, 2014). There are cases of countries, saliently the United States, where mention of the right is absent from its constitution, and yet the way in which it plays out within the political system allow it to take the shape of a right which is protected by the constitution. That this is so is admittedly still a disputed matter. A defence of this fact on the basis of lower court resolutions and dicta of the Supreme Court has been articulated in Nicole A Gordon, "The Constitutional Right to Candidacy," *Source: Political Science Quarterly* 91, no. 3 (1976): 471–87.

[54] Many might disagree with these statements and claim that inequality, rather than equality of opportunity, is what has been on the rise. I am under the impression that this might well be true for specific situations, but that the overall trend has been towards an increase in equality of opportunity within and across countries, particularly in reference to previous centuries. It is also true that our sense and awareness of the injustice entailed by many forms of inequalities has heightened in the past decades, which might blind us from recognizing what has already been achieved.

we have ended up integrating them both into our 'everyday concept' of democracy. Indeed, in common parlance today, we no longer use the term *democracy* only to refer to a particular 'system of government', as was the original technical sense of the term as it stemmed from political science and theory. Rather we find democracy to be "increasingly talked about as a value system."[55] And amongst that value system, we particularly tend to equate democracy with the principle of *social equality*[56].

It is in this latter sense that we have witnessed the rise in past decades of talk of the *democratization* of a wide variety of social goods, resources, and areas of life more generally. It today common to hear talk of the democratization of basic needs such as access to water or a living wage, and to things such as culture, technology, fashion, information, education, the workplace, capitalism, art or even luxury, etc. Within this new usage, the term can most accurately be understood in terms of an increase in accessibility to those goods or resources by most, or all, members of a given society. What we have seen is, in other words, a continuous movement towards overall social equality around the world, along with an increasing awareness of the moral imperative that it should be one of our primordial collective goals in many cases.

In relation to this latter democratizing trend it is ironic, to put it elegantly, that it has neglected, both within academic and political discourse, inasmuch as in political praxis and transformation, at least one of the core elements that *formally* define a democracy in the original (modern) technical and narrow sense of the term. This is, to the achievement of social equality in relation to the access to the exercise of the Right to Candidacy. The RC is, as such, left today in the paradoxical reality of being an

[55] Ashok Swain, Ramses Amer, and Joakim Öjendal, *The Democratization Project: Opportunities and Challenges* (London: Anthem Press, 2009), p.1.
[56] There is no need to dig deeply to find this. See for example meaning 1.3 of the entry "Democracy" "Democracy," in the *Oxford English Dictionaries*, online where it is defined as "[t]he practice or principles of social equality."

undemocratic democratic right. A right which is *formally democratic* in the technical sense of the word 'democracy', and yet is strikingly undemocratic in relation to what real context and social practices allow individuals to access in terms of social equality. More precisely, in terms of substantive equality opportunity across societies.

Within academia, particularly within Political Theory, there has been caution against using the concept of democracy so loosely, so as not to normatively conflate different sets of problems. Indeed, the question of whether we should aspire for social equality, and what the latter exactly means is generally understood as pertaining to the study of social justice. On the other hand, issues related to whether democracy should be our mode of political organization, or form of government, and how exactly it is to be spelled out, are thought of as primarily involving a concern with political legitimacy. The first set of questions is address by theories of social justice, while the second by what is called Democratic Theory proper. Both sets of questions, and the corresponding fields they shape, share the trait of having been amongst the driving forces of Political Theory, as a discipline, in the past decades. Still the situation of the RC which I have outlined, however technically or colloquially conceptualized, has eluded consideration from both arenas.

But neither field in Political Theory can afford to ignore it any longer. We have certainly witnessed profound social changes in our times in which access to countless social spheres and activities has been extended to those previously marginalized from them, and which have equalized opportunities across the arbitrary social hierarchies of previous *status quos*. Yet, the stringent divide between 'political elites' and 'the people',[57]

[57] Notice this is different form the divide between "the government" and "the people", or "the state" and "the citizens" etc.

is still far from being a relic from pre-democratic eras[58]. The recent rise of populist rhetoric across the world has testified to it, signaling, the very least, that such categories resonate deeply with the self-understanding of many a country's populations today,[59] along with the perception of the inherent unfairness of such a situation. This, I believe, evinces the need to acknowledge how the substantially unequal distribution of the RC, as I claim to be the extended case today, constitutes an urgent issue to be address from a social justice stance (on the face of political usurpation by elites), and which is, at the same time, an issue necessarily intertwined with our understanding democratic legitimacy.

I will first provide an argument for why substantive equality to the exercise of the right to candidacy matters in terms of the political legitimacy of what we might otherwise consider a democracy. Then I will sketch a four-tier account of the contents of the right to candidacy as they are presupposed by any approach to the legitimacy of representative democracy, and whose protection, I will show, significantly surpasses what can be addressed from the perspective of formal equality to the RC. In addition, through my multi-tier analysis of the right I will show how its substantive distribution constitutes itself an issue of social justice, independent, to an extent, from our legitimacy concerns.

Finally, I address the question of how the responsibility for substantive equality of access to the RC is to be imputed, particularly on the face of the seeming impossibility for the government to protect anything other than formal equality of access to the right. I will claim that a prominent weight will fall on the shoulders of political parties. I close

[58] For reference to the fundamental lack of political mobility across economic and educational social divides in the US, arguably one of the most democratic countries see Henry E. Brady, Kay Lehman Schlozman, and Sidney Verba, "Political Mobility and Political Reproduction from Generation to Generation," ed. David B. Grusky, Timothy M. Smeeding, and C. Matthew Snipp, *The ANNALS of the American Academy of Political and Social Science* 657, no. 1 (January 10, 2015): 149–73.

[59] See for example the comprehensive mapping of the rise of populist rhetoric as a trend spanning both across the world, and across the political spectrum, as conducted by Team Populism and recently reported on by *The Guardian:* Paul Lewis et al., "Revealed: The Rise and Rise of Populist Rhetoric," 2019.

the paper by exemplifying how such a duty towards substantive equality of access to the RC can be fulfilled by parties through voluntary nomination quotas. Through this I aim to illustrate one of the many possibilities open to us in order to substantially democratize what in paper we call a democratic right.

2.2 Doing better than formal equality to the Right to Candidacy

If we wanted to make a catalogue of *democratic countries* across the world, a straightforward method would be to concoct a definition of democracy and then see which countries *de-facto* fulfill such definition. A good definition for our identificatory purposes might very well be that democratic countries are those countries in which all citizens are recognized by law as equals in their right to participate in electoral processes as voters and as potential office holders.[60] Then, if a given politically community has it written down on its constitution, or otherwise relevant legal document (like its electoral law), that all citizens[61] have a right to vote and a right to candidacy, it will be true, by definition, that such a political community is a democracy.

Suppose now, however, that our cataloguing impulse did not come merely from a descriptive drive, but rather from an *evaluative* one. What we really want to know is which countries are democratic, because we have already loaded the term *democracy* with normative content: independently of what else we fill it in, we believe that if a country is

[60] As Richard Arneson has put it "in a society governed democratically, elections determine what laws will be enforced and who will occupy posts that involve political rule. In these elections, all adult members of society have a vote, and all votes are weighted equally. All adult members are eligible to run for political office in these elections" in "Democracy Is Not Intrinsically Just," in *Justice and Democracy: Essays for Brian Barry*, ed. Keith Dowding, Robert Goodin, and Carole Pateman (New York: Cambridge University Press, 2004).

[61] It is certainly the case that in no country do *all* citizens have the right to candidacy. Those that do not fulfill certain conditions of time of residence, for example, are usually banned from office. I have discussed the normative aspects of such formal restrictions in the first chapter of this thesis. For the sake of the present argument, I shall proceed on the democratic assumption that everyone *should* have the right, and that the very minimal formal restrictions upon it that do exist are justifiable and/or negligible deviations from that assumption.

democratic, then it means it has a *legitimate* political regime. If this is the case, our previous method by legal analysis will not do. Our definition will need to include further contents if we want both to keep a) the originally concocted legal definition plus b) our evaluative appreciation that 'democratic countries are legitimate.'[62]

There is an obvious reason for why this will not be so: it can very well be the case that a given country is corrupt and its law not enforced. This alone would be a reason for denying that the mere having a given set of rights enshrined into a constitution, or otherwise codified into the relevant body of law, confers legitimacy upon a country's political regime. Clearly, we can think, such law should *also* be respected and implemented. My claim is, however, that this runs short of what is necessary to claim that a given regime that purports to be a democracy is legitimate (that is, legitimate on the terms in which we can claim a democracy to be legitimate).[63]

There is a more fundamental reason why the mere legalistic, or *formal*, analysis of the democraticity of a given regime will not provide a satisfactory answer to our normative cataloguing interests. This reason is that what can be protected by law, in this case a formal equality of access of all citizens to the RC, even when protected to outmost

[62] This is the reason why international indexes of democratic countries tend to evaluate aspects other than legal frameworks in order to catalogue a given country as a 'democracy'. A usual element of evaluation is whether such countries have 'healthy' electoral processes. My claim in relation to this is that more than that is necessary, or, what is the same, that healthy electoral processes are not only those in which electoral fraud is eluded, but rather those that take place, among other things, within conditions where substantive equality of opportunity for the RC exists. For an example of these kind of indexes see *Freedom House's* Christopher Brandt et al., "Democracy in Retreat: Freedom in the World 2019," 2019.

[63] Ultimately, we cannot come to determine that a specific existing political regime is legitimate for there are many other considerations other than the ones that I am espousing here, not only that I cannot cover, but that we cannot come to know to judge over. An analogy with an individual agent might help elucidate this idea. We cannot, as human beings, ultimately judge the morality of a given action of a given agent. We would need to work with the interplay of a whole lot of intentions and circumstances, both as presented objectively to the agent, and as perceived subjectively by her. Cognition of these, plus the ability to judge accordingly are not within the competences of the human intellect. This, however, does not bar us from coming to general conclusions about moral actions, and even coding some of them into our legal system. The same can be said in relation to our judgement of political regimes: we can aim to provide a general account of the elements necessary for them to be legitimate, as I am attempting to do here, yet we should not be fooled into thinking that with those elements we can judge with certainty the legitimacy of a particular existing political regime. As such, the cataloguing exercise I am referring to should be understood as the best approximation to such judgement to which we can strive for.

perfection, may not be enough to confer legitimacy on the system as a whole. A given set of other social and material realities will also need to be in place, even when they cannot, or should not, be fully regulated by law. Their existence will necessarily be harder to evaluate in terms of our cataloguing impulse, but accounting for them will be the only way to fully grasp what might still be missing for a given country to be legitimate as a democracy.

Before delving into these ideas any further, let me first make a precision regarding what I find to be the task of Political Philosophy is on the face of these type of evaluations. Given the nature of the discipline, Political Philosophy cannot make 'concrete' judgements, as in "*X* (substitute by the country of your preference) has, all things considered, a legitimate political regime." As understood within classic Aristotelian epistemology, one cannot make science of particulars. Normative judgements on particular regimes (that is, of *x* or *y* existing country) are the result of prudential reasoning, not of philosophical reasoning. What Philosophy aims to provide are abstract normative guidelines, in relation to which we might make our prudential judgements, but it cannot take their place.

In relation to the question of which amongst current countries are to be included within our catalogue of those which are just and/or legitimate insofar as they are democratic, what we *can* do is provide a set of general desiderata that they should meet. We could then try to identify which countries, as things are, seem to satisfy them. Yet, as philosophers, we could never provide a catalogue of just and/or legitimate existing regimes all things considered[64].

[64] For better context within mainstream literature, let me make a clarificatory note on where this idea stands in relation ideal vs. non-ideal theory debate on the methodology of political philosophy. Even when such debate tends to focus on how we should go about in determining the principles of *justice*, rather than legitimacy or other normative concerns, it could be extended to the latter. As such it might be thought that the distinction between the legitimacy of the law and the abstract constitution of government, versus the way it plays out in relation to social context, which I am deploying here, might fall into the ideal/non-ideal

So, why does a country need to satisfy both legal conditions, as well material equality and social equality conditions, for its regime to be considered legitimate (insofar as democracy can be called legitimate)? That is, why are both things necessary to claim that is a regime in which the *de facto* political authority also has authority in a moral sense. Or, what is the same, that the *de facto* political authority has a right to, or is morally justified, in enforcing laws upon the citizens. The reason for this is that, within all attempts to justify democracy,[65] and more particularly, representative democracy, the basic assumption is that what is being looked for is the justification of the legitimacy of a system in which all citizens share on equal terms in the government of their country. Whenever this cannot be the case to perfection, as is in the case of modern, representative democracies, at the very least people have an opportunity thereof.[66]

This opportunity to govern in equal terms has saliently been put in terms of an equal share in the right to vote, yet it has been recognized as not exclusive to it. The debate on democracy has notoriously been opening in these past years to include not merely this solely aggregative way of decision making, but also what have been identified as 'discursive' and 'deliberative' ways that can be lived out at different moments of the political life, but which in any case, must guarantee conditions of equal participation

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divide. I do not see, however, my method as falling within this, for I read the debate as one which intends to answer the question of which method can tell us in a sort of definite matter how we should act, to straightforwardly inform us un the matter. As I see it, it is the job of existing countries and individuals to make particular judgments on political actions. In other words, what I am arguing is that this is not merely a matter for non-ideal theory to deal with. That is, in terms of evaluating how far reality deviates from the ideal in order to make a normative and value-driven judgment. What I am claiming is that for particular situations as instantiated in reality we cannot come to grasp all that is necessary to make such a judgement from a philosophical standpoint. For a succinct cartography of the 'ideal/non-ideal theory debate see Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map," *Philosophy Compass* 7 (2012): 654–64. For a succinct account of the concept of prudence, or *phronesis*, in Aristotle see Christopher C. W. Taylor, *Aristotle on Practical Reason*, (Oxford: Oxford University Press, 2016).

[65] That is, regardless of whether the adequate justification can be spelled out in terms of reasons intrinsic to the system, such as the value of equality, or extrinsic to it, such as its achievement of desirable outcomes, the presupposition is that what is being discussed is government by equals.

[66] Modern representative democracies constitute, in a sense, a detour from that original idea of equally shared political power. Insofar as equal direct participation is acknowledged to be impossible due to social and material conditions such as population size and the need for the division of labour, indirect participation through representation is accepted as the second-best alternative.

within them.[67] Plus, insofar as the system for which legitimacy arguments includes elements of indirect democratic government, as is the case of modern representative democracies, equality is to be extended to the opportunity to fill in the political offices through which such government is exercised. If citizens cannot exercise these rights to government, or the opportunity thereof, in equal terms, then whatever justification we found adequate for democracy will not apply to them.

In order to understand why access to the RC must be itself equal, we need to acknowledged that representation, as a form of mediation of political influence, does not warrant equality of the latter, but rather introduces an inequality of it. This is both because the interests of some citizens will end up being better represented than others, and because the stringently select few that will hold political office undeniably have significantly more political influence than the rest of the population. Because of this, the distribution of the opportunity for political office, secured individually by the RC, must be equal across the citizenry, if democracy on its representative form is to be deemed legitimate.

Substantive equality of opportunity to the exercise of the RC is certainly not the only condition for democracy to exist. Yet my claim here is that it is an important condition, inasmuch as what we are really discussing are indirect democracies. And it is a condition which has saliently been overlooked. Formal equality of opportunity to is exercise, as can be guaranteed by the law in the sense of considering all citizens, *a priori*, as equals before the law is not enough. It is not hard to pinpoint cases where political offices are only filled by what can be called 'political elites'. This is certainly not illegal where formal equality of opportunity is protected by law. But we can certainly question

[67] For a roadmap of this rapidly expanding field, known as 'deliberative democracy' see Robert B. Talisse, "Deliberation," in *The Oxford Handbook of Political Philosophy*, ed. David Estlund (Oxford: Oxford University Press, 2012).

whether in fact that is not rather more akin to an oligarchy than a democracy. And defences of democratic legitimacy, however spelled out, do not apply to oligarchies.

2.3 The four-tier structure of the contents of the Right to Candidacy

As I have pointed out, the Right to Candidacy is today recognized as a fundamental political right by most international and regional treatises, as by many democratic countries along the world. The legal wording it adopts across these documents, however, tends to vary. Amongst the variant names under which it is called some of the salient are: the right to run for (political) office, the right to be elected for office, the right to stand as a candidate in electoral processes, and even the right to hold office. These different "brandings" allude to the different aspects of what can properly be said to constitute the content of the RC. At the same time, using different names to denote the same thing is a recipe for confusion if there is not a shared underlying conceptual clarity on the matter. A substantive account of the contents of the right to candidacy that unifies across those different shapes that the right legally takes is nowhere to be found in the literature. As such, in what follows I aim to provide one.

First, however, a further precision needs to be made. In addition to the plurality of names under which this right can be found, many particularities of its exercise vary significantly from one political context to the next. Indeed, there is a range of variation in the types of political offices open to selection via competitive democratic elections, both across different countries, as across different levels and branches of government organization (legislative, executive, and sometimes even judicial). When examining our democratic life, we certainly have good reason to question what offices are to be open to this sort of political selection, and even contest the particular aspects of elections such as the mechanisms of vote aggregation, or whether the election is done directly for a person,

or rather for a party etc. For the purposes of my present argument, I will bracket out those parallel debates and use the following definition as a general characterization of the RC, which is meant to apply to whatever political office might happen to be open for electoral competition.

> *The right to candidacy is the political right that involves a) the claim to be eligible as a potential holder of a political office, and b) the liberty to declare yourself willing to take the duties of office. The actualization of the specific potentiality to hold power that it entails is subject to the selection, through a voting mechanism, by the population, or part thereof, that will be subject to the exercise of such power.*[68]

There are several parts of this definition that merit clarification. First, we must distinguish two sets of claims as included within the right to candidacy: those which involve a potentiality, and those which involve the 'actualization' of a potentiality, as entailed by the exercise of the right. In other words, my claim is that the right to candidacy is not a single claim or freedom but should rather be understood as a complex right within which a bundle of claims and freedoms are integrated. Each of these latter can in turn be exercised to different extents and at different moments within political life. The value of the right to citizens as its rightsholders can be found dispersed amongst those different claims.

1. A rightsholder of the RC holds a claim to be 'actually' recognized at any point in time to be on equal footing with her fellow citizens as the potential holder of a political office in coming elections.

2. A rightsholder of the RC has the negative freedom to declare herself at the relevant time during an election, 'in a meaningful way', as willing to take political office. This freedom is accompanied by the positive claim to being 'adequately' considered as a possible contender in the electoral race proper.

3. A rightsholder of the RC holds a claim to enter the electoral race itself, by being recognized through the legitimately established mechanisms of the political body as a 'candidate' for a given political office. In other words, as a member of the 'official' pool of nominees from which the voters will choose come election day.

4. A rightsholder of the RC holds a claim to take hold of the electoral office if selected by the established voting mechanisms as the winner of the race.

[68] This definition was previously developed within the context of Chapter 1.

A few clarifications in relation to these different claims are in place. First notice that to determine what the worth of the Right to Vote (the sister right of the RC) is, the appropriate strategy might also be to distinguish amongst the different claims entailed by the right. It is useful to make this exercise in comparison between both rights because, in general, we tend to be more familiarized with discussions on the contents and value of the Right to Vote (RV). As such, it might help to analyse the RV first as a bundle of claims itself in order to understand in what way the RC can also be understood in those terms. The parallel analysis of the RV would reveal at least three claims as composing it:

1. A rightsholder of the RV holds a claim to be 'actually' recognized at any point in time to be on equal footing with her fellow citizens as the potential political selector in coming elections.

2. A rightsholder of the RV holds a claim to be properly registered as a voter, when this is necessary, and the freedom to cast a ballot on election day.

3. A rightsholder of the RV holds a claim to have her preferred option take office when this later has won the election.

The right to vote can be said to be of value to citizens in relation to each of these claims separately. RV claim 1 accrues a given rightsholder an equal political status to the rest of the rightsholders. This can be considered of value in its own sake, but also in relation to the political bargaining power it can be said to confer its rightsholders, both on the face of her fellow citizens as on the face of current or coming governments. This political bargaining power, for instance, can mediate citizen to citizen relationships when both share an equal right to vote and, as such, they will recognize each other with an equal potential capacity to influence political outcomes, whatever the otherwise many differences between them that might be at play. Moreover, RV claim 1 also ensues its rightsholders recognition and consideration from existing and aspiring politicians, as they will need to acknowledge their needs and interests, as then position themselves in in relation to them.

RV claim 2 warrants the rightsholder her actual and effective participation in the election of politicians. It is fundamentally a negative freedom, a claim not to be prevented from casting a valid ballot when it is your wish to do so. Its value stems the value itself of this kind of political participation, at least where the rightsholder considers it to be of value. Finally, the RV claim 3 is a positive claim to the fairness and transparency of the electoral competition, and to the legitimate recognition of the results. The value in this to the rightsholder is, first, the more patent value of having her chosen option take power if the latter won, along with the ways in which she might come to be benefitted by this victory. But second, the overall stability of the system with the promise that her preferred option might win and effectively take power next time. [69]

Let me now make a similar analysis in relation to the elements that give worth to the Right to Candidacy, with which we tend to be less familiar with. The value to the rightsholder in the first claim that the RC involves (RC claim 1) shares a very close similarity with that of the first claim of the RV as I have presented it. Fundamentally, it can be said to endow its rightsholders with a political bargaining power in equal terms. This does not only benefit RC rightsholders in terms of a shared capacity of political agency which they can use to favor their strictly political interests. It can also give them bargaining power in other areas of life, ranging from family matters to economic matters, where power is exercised by one person over another. This surfaces as a first reason of why equal access to the full exercise of this right is not only a matter of political legitimacy, but is, in addition, a matter of *social justice*.

The value of RC claim 2 is given in terms of it delineating a protected space of political participation. As in the case of the right to vote, the claim at stake is to be enacted

[69] As Joseph Shumpeter recognized as one of the prominent virtues of democracy as a system in his canonical *Capitalism, Socialism and Democracy* (New York: Harper and Row, 1956).

freely by the rightsholder, in the sense that she should neither be forced into it, nor prevented from it against her will. The ability to declare herself in a meaningful way as someone willing to take political office is valuable in itself as an opportunity for political participation, independent of how far she might climb or not in the overall electoral process. Amongst the benefits the rightsholder might seek through this type of participation are those of calling attention to a certain cause she espouses, a sense of deeper commitment and involvement in political life, etc. Note that for any of this to make sense, her negative freedom needs to come hand in hand with the claim of meaningful recognition of her self-nomination.

RC claim 3 is more conditional than the previous two. Indeed, claims 1 and 2 are due to all the rightsholders of the RC, no conditions attached. The claim entails, properly speaking, that claim to have your name appear on the ballot. The potentiality of this taking place is, of course, entailed in claims 1 and 2. In fact, these latter would lose their meaning and value if they were not in alignment with the possibility of actualizing claim 3. Yet the actualization of RC claim 3 is subject to several conditions. On the one hand, the final list of names that appears on the ballot is subject to size considerations. The restricted size of the final ballot ultimately responds to the need to provide voters with a sizeable pool of options, amongst which they can reasonably choose, subject to their own spatial and temporal limitations.

The specific contents on the ballot will end up being a result, in practice, of the number of registered parties who have themselves registered a candidate, along with the intra-party mechanisms for candidate selection, the number of independents that have satisfied legal conditions for their nomination (where this is the case) etc. The worth of the third claim is, certainly, also distinct from whether the nominee achieves the final electoral victory, or not. It will stem from the platforming of one's political views, or the

political views of those represented by the candidate, that usually accompany political candidacies. Note, however, that this claim does not necessarily entail positive claims to the state resources that might be necessary to make the contest fair (such as equal time in federal media, or public funding for campaigns etc.), unless we are thinking of substantive equality of opportunity, as I will discuss in the next section.

RC claim 4 is, evidently, even more contingent than the third. It is the claim to hold the office one has won. This is what is primarily being alluded to by those legal documents within which the right is typified under the wording of "the right to be elected for office" or, more bluntly, "the right to hold (political) (elective) office." The claim implies that the electoral winner does not suffer electoral fraud, and that the elections are overall fair. The actualization of this potentiality will only be available to a minute number of citizens and is determined to the amount of political offices open to be filled in by popular vote. Who gets to actualize this potentiality as entailed by the RC is ultimately conditioned by the voters' preferences. This might be considered, under a certain lens, as the ultimate value of the right, and the goal or good that those who decide to exercise their right aspire to.

2.4 Substantive equality of opportunity to the contents of the Right to Candidacy

Accepting that the contents of the RC can be best conceptualized by distinguishing four different dimensions within it, as I have claimed in the previous section, is necessary in order to adequately engage in an analysis of the substantive dimensions of its distribution. Indeed, the mere legal determination of who is to be recognized as a rightsholder of the RC is certainly not enough to guarantee that such a formally defined set of rightsholders actually enjoys the right in practice. And, what is more, as has been shown in the previous section, there are unavoidable material impossibilities that

constrain the enjoyment of the total continuum of the worth of the right to a progressively more constraint set of rightsholders. Any worry in relation to the conditions that allow rightsholders to effectively exercise their right must grapple with the question of how much enjoyment of the worth of the right is to be substantially secured to the full set of its rightsholders as a matter both of democratic legitimacy as well as of social justice.

Allow me to first make some conceptual clarifications in order to provide a better grasp of the nature of the problem at hand. The notion of 'equality of opportunity' (though not of outcome) is the benchmark under which the distribution, both in a formal as in a substantive way, of the RC is properly understood. Indeed, both reasons of democratic legitimacy and social justice make it so. I have already made the case for it in terms of legitimacy. In relation to the broader consideration of social justice, the case still needs to be made. What is first important to note is that this latter is not entailed by the otherwise legitimacy of the political system. Following the Rawlsian tradition, we may understand social justice to be spelled in terms of how liberties and material benefits, as well as social burdens, are distributed in a society. In his early work Rawls himself did include the RV and the RC as two of the fundamental political freedoms that should be protected in equal terms for all citizens.[70] Yet, in his later work, he acknowledged the possibility of there being just societies that did not satisfy the criteria of liberal democracy.[71] This might be amongst the reasons why, as of today, the tradition in social justice that has followed has engaged with the requirements of justice in a parallel body of literature to that of Democratic Theory.

My claim here is that the issue of the distribution of the right to candidacy is a matter of social justice, independently of its role in relation to the legitimacy of the

[70] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p.53.
[71] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

political system in this sense. This is because, as opposed to what is the case for the right to vote, the value of the RC to an individual citizen as I have spelt it out in the previous section is not strictly confined to the opportunity for political influence, as a narrow understanding of it would have it. Indeed, the right to vote confers upon its rightsholders an equal opportunity for a certain type of political influence, which can be exercised at specific points across their life. The RC is not. A broader understanding of it, as the one I have tried to provide, reveals that it is also a locus of social mobility. This fact has not been widely recognized, yet it was adequately captured by Charles Beitz's acknowledgement that, as opposed to the RV, the RC was to be properly conceptualized as the "opportunity for a career."[72] Max Weber's understanding of political mobility overall as social mobility (which has unfortunately tended to be neglected), is also fundamentally telling in this respect.[73]

Electoral political office as a career has indeed unique characteristics, which properly situate the opportunity for it within the sphere of political rights. Yet, it is also the case that, at least insofar it concerns the enjoyment of the worth of the right in RC claims 3 and 4[74] described in the previous section, it is accompanied by a range of social benefits that are not uniquely confined to the political arena. Amongst this: the broad social recognition and high status that usually accompanies someone's selection as an official candidate to office. This alone can open for the individual, even when she loses the electoral race, a wealth of future opportunities in terms of future employment or participation in high-end social activities, to which she might not have had access to otherwise. To this one can add the more specific economic benefit of having an office

[72] Beitz, *Political Equality: An Essay on Democratic Theory*.
[73] Max Weber, "Class, Status, and Party," in *From Max Weber* (New York: Oxford University Press, 1946), 180–195.
[74] As well as the social benefits of RC claim 1 which I have noted above.

holder salary that those who do win the electoral race will access. Because it can be in this sense situated within the broader sphere of the distribution of material resources, as well as other social benefits and positions, we may accept that its adequate distributional rationale should be that of equality of opportunity, as is recognized for a wealth of other social positions.

The distinction within the idea of equality of opportunity of what have been termed its 'formal' and its 'substantive' aspects is undoubtedly one of the salient conceptual advancements of social justice theory in the last decades. The notion of 'formal equality of opportunity' alludes to the absence within a given social situation of unfair *direct* discrimination. The idea of a 'substantive equality of opportunity', by contrast, focuses on the absence of *indirect* discrimination, in relation to the wider material and social conditions within which a given competition takes place. The former does not include the latter because it only involves the idea of there not being arbitrary obstacles for a person to follow her chosen path, one for which she is *a priori* assumed to be capable of.

The right to vote has recently been gaining track as a locus of analysis in terms of substantive equality of opportunity. It has saliently been claimed that substantive inequalities in relation to the capacity to exercise this right are introduced when there are sets of citizens who cannot access voting stations, given a number of material constraints.[75] Indeed, as I have previously sketched, the full value of the right to vote is not spelled out in terms of a citizen's freedom from coercion not to vote, but rather by their real ability to cast a vote, as well as in terms of that vote being meaningful. By the latter it is usually meant that any individual vote is acknowledged equally to other votes

[75] A salient case of this is the relationship between disability and lack of ability access to voting stations. See for example "Polling Stations 'fail Disabled' through Lack of Access," *BBC*, 2010.

(no vote has more weight than another), and sometimes also that it has been cast under conditions of adequate information and deliberation.

A parallel analysis has been neglected for the RC. In what remains of the present section I shall sketch how an analysis of this sort might look like, in relation to my fourth-tier structure of the contents of the RC. Within next section I shall provide some empirical evidence to attest for current trends in relation to the substantive equal enjoyment of the RC (or, rather, the lack thereof) and will then suggest corrective paths that might be implemented in order to reach a more substantially equal situation (in terms of equal opportunity to enjoy, rather than in terms of equal enjoyment) in relation to how the responsibility for their achievement should be ascribed.

The requirements for formal equality of opportunity to RV claim 1 can be grasped straightforwardly. Indeed, what is asks for is for there to be a lack of *official* 'political classes': defined social groups or castes to which eligibility for office is restricted. Yet, in relation to this claim, there can only be said to be substantial equality where there is indeed a high degree of perceived plausibility that any citizen taken at random from a political community will be an elective office holder at some point in her life. Such a degree of plausibility would be the condition necessary for the actual recognition of any citizen by her fellow citizens as a potential electoral office holder. The straightforward way to secure substantive opportunity in this regard would, of course, be to eliminate selection via elections altogether, and substitute it by lotteries. Yet this option, while blatantly more egalitarian in relation to office-holding selection, would open a new can of worms. Among other things, it would problematize our mechanisms of representation as indirect participation, and our notions of elections as political accountability mechanisms, etc. calling as such into question the legitimacy of the system.

Ruling out the option of lotteries, what would be the threshold for the desirable "high degree of plausibility" for someone being an electoral office holder, necessary for the equal societal recognition of the status in question? In the case of the right to vote, equal recognition of every citizen as a voter would certainly be impeded if a set of citizens was consistently deprived of the factual possibility to vote for lack of access to a ballot station. If this were the case, they would very likely be viewed as political outcasts, even when 'in paper' (i.e. the constitution, or the relevant electoral legislation), they were recognized as potential voters. We could easily imagine that as a result of this, incumbent politicians or candidates for the next election would fail to take their interests into account. The case for the right to candidacy is certainly more complicated, but at least a rule of thumb can be provided here.

Indeed, as with many things in our political reasoning, it might not be possible to spell out specifically what the 'high degree of perceived plausibility' of someone being elected would be. There would not only be a certain amount of arbitrariness in fixating a number, but also it would be incredibly hard to measure empirically. Yet, we can unarguably say what the measure is not, and from there strive for as much as the situation at hand would allow for. We can claim, for example, that were there has not been a political candidate that comes out from a fixed subset of the citizenry over a considerable period, the citizenry at large will have it as highly implausible that a political candidate would come out of it in the foreseeable future. Apart from the more obvious caste systems, a salient case of this would be social class, as in the historical case of the British Labour Party which sought to only file candidates from the working class). In this sense, it can be said that, as a rule of thumb, a constant plurality and rotation among the subsets of the population to which official political candidates belong is necessary for there being a perception of a high degree of plausibility.

Equality of opportunity as entailed by RC claim 2 is satisfied at a formal level where there is no state penalty attached to someone's declaration of herself as a willing contender for office, or any other form of coercion against her doing so. This is a potentiality that you may or may not desire to actualize. Presumably the actualization of this should only depend on your freewill. However, it can be substantially hindered by social norms and practices that informally punish a given person that decides to present herself socially as willing to take office. An example of this would be, for example, a mother socially deemed as 'irresponsible' or 'bad' when she publicly states her intention to run for office. A parallel example would be that of workplace discriminatory practices against those who have stated an interest in running for office.

The identification, and consequent correction, of situations in which there is substantive inequality in relation to the exercise of RC claim 2 can be more challenging than in the case of RC claim 1. The reason for this is that the second claim presupposes the voluntary action of rightsholders. And whereas an analysis of equality of opportunity would assess foremost whether social punishments are attached once a person has made her desire to run socially known, we also need to investigate the reasons why she might have chosen not to. When these are related to the action being perceived as socially punishable, there is reason then to deny that there is in fact substantive equal opportunity to exercise the right.

The issue can get even more complicated in situations of what Martha Nussbaum would call *adaptive preferences*.[76] This is, situations where a person's desires have already been modified to align with what they perceive to be real possibilities for them. Following along with the mother example, the said woman might not declare herself as

[76] See for example her exposition of the matter in her *Woman and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000).

willing to run, not because she fears what she perceives as a likely punishment. Rather, due to deeper imbedded patterns of socialization, through which she might already have 'convinced herself,' that she is not interested in running. Of course, determining that this is the case is extremely difficult, and at a high risk of paternalism.[77] Yet we must acknowledged that the adaptability of preferences does present a problem in terms of substantive equality of opportunity to the RC, as it does in relation to many other cases of social justice.

The actualization of RC claim 3 in terms of substantive equality of opportunity is more complicated than for RC claim 2. The added difficulty comes from the dependence of claim 3 not only on the individual will of a given citizen, but also on the wills of those upon whom her official nomination depends. These are usually the members of the party, the head(s) of the party, or the members of a constituency where primaries exist, or where a number of their signatures is necessary for the registration of an independent candidacy. Because of this, we might fall into the temptation of worrying only about equality of opportunity at the formal level in what regards this claim. Formal equality of opportunity would presumably be satisfied by there being procedural fairness rules at play in the mechanisms for political nomination.

Yet, we know that even where there is some form of procedural fairness, there is ample room for substantive inequality. Recall the case regarding equality opportunity to the right to vote: even when procedurally fair rules such as 'one person, one vote', and 'equal weight for all votes' exist, many people might end up disenfranchised in practice due to their inability to access ballot stations. We are faced with a similar situation here. Indeed, even assuming, for the sake of argument, that the sorts of nomination mechanisms

[77] That is, of the imposition of a given person's or group's value, to another person or group, under the excuse that they do not really know what they want (or should want).

at play in representative democracies today are procedurally fair, we might still find there to be substantive inequality of opportunity to candidate nomination.

A first case of this would be an extension of equality of opportunity of the RC claim 2. Indeed, those responsible for candidate nomination only have reason to consider as potential nominees those who have freely declared themselves as willing to be so, but as I have explained, it might tun out to be the case that there are substantive barriers to this. A second case would involve the more familiar case of implicit bias that has been amply shown to corrupt many other situations of social selection such as university acceptances, employee selection etc., where some perceived characteristics of the person which are irrelevant to the selection process in question can either unfairly favour or disqualify a given applicant.

A third case of substantial inequality of opportunity for nomination would involve factors of material inequality. There is, for example, the important link between material resources and successful political campaigns, along with the wealth of normative problems attached to this[78]. Yet, how material resources affect nomination has attracted virtually no attention, other than the recognition that time away from work can play a significant role in many people's decision to run. This is an area of urgent inquiry, both to establish what this, very plausible, relation between material resources and nomination is, as well as the normative study in what should be done about it.

Finally, RC claim 4 is the one that has by far received the most attention, although more under the lens of democratic legitimacy, than under the perspective itself of the right to run for office. RC claim 4 relates to the nominee's opportunity to win elections and, further, to take the post of office if she wins, under conditions of equality. This asks for

[78] A straightforward example of this is the impact that nomination fees have in people's decision to run. See for instance Richard Katz, *Democracy and Elections* (Oxford: Oxford University Press, 1997).

the formal equality of the electoral race, and for the existence of substantive dimensions of equality in the race. The debate around this has primarily focused on the worries related to campaign financing, and time allotted in the media. Yet, inquiry into the matter from the general perspective of overall democratic legitimacy has focused on how different patterns of funding unequally distribute political input into the agenda. It has been pointed to the fact that the existence of private funds leads to an over inclusion of the interests of the economic elites, in detriment to the rest of the population.

What would a focus on the interest of candidates in substantive equality of opportunity for winning the race add to the previous perspective? As I see it, it might strengthen the case for barring private funding, and paid media. Public funding would be further justified as necessary to secure a richer conception of democratic legitimacy, in terms of being necessary to secure substantive equality of opportunity to a fundamental political right. I cannot at present develop or analyse either this, or any of the above cases further. Their only intention within the argument of this paper is to illustrate the kinds of things an approach to substantive equality of opportunity for the right to candidacy might ask for.

2.5 Substantial barriers to the equality of opportunity for running for office

In the above sections I have developed an account of the right to run for office that does not restrict the value of the right to the rightsholder merely to the desired end-result of securing a position in office through electoral means. I have included the consideration of the interest a citizen might have in participating in the official electoral race, irrespective of its result. What is more, I have argued that the value protected by the right is not confined to participation in the electoral race argued. Rather, the recognition of someone as a potential office holder, irrespective of whether she in fact has a desire to

run or not, plus the appropriate protection, respect and recognition of the action wherein one declares herself as a willing office contender are also entailed by the RC, insofar as its political function is not merely that of allowing for a pool of candidates to be selected, but more fundamentally to put citizens in a relation of reciprocal equality against each other in political matters. In the latter indeed lies one of the fundamental reasons for the existence of the right to candidacy.

What follows from the separation I have done of the different moments on which a citizen might enjoy the right is that concern with substantive equality for each exercise is to be evaluated differently for each dimension of possible enjoyment of the right. Overall, equality of opportunity for each dimension should be evaluated against the material circumstances that might be relevant to it, in order to find what we should strive for. It is reasonable, as I have explained above, that the enjoyment of RC claims 3 and 4 should be accessible in practice to a very limited number of citizens per election. For RC claim 3, justifiable reasons for such a limitation are given in terms of the number of political parties, and/or the number of candidates it is reasonable for the median voter to discern amongst. In the case of RC claim 4, the number of citizens who enjoy this dimension of the right will necessarily be limited by the number of offices open to be filled through election at a given policy at a given time.

Yet, for RC claims 1 and 2 there seems to be no *prima facie* reason against the whole of the population enjoying it at a given time. And, given the importance that there should be equality of opportunity on the matter both for our interest on the legitimacy of the system, as for matters of social justice, as much efforts as possible should be directed to ensuring that this is the case. A proposal on this regard would be the institution of quotas, justified not as has been the tendency, in terms of securing a better kind of political representation (descriptive representation), but rather at correcting the overall social

perception of the types of people that can plausibly take political office. The results might end up being very similar, if what where determined as descriptively underrepresented groups are also those whose members are the least likely to want to run for political office. This difference in focus allows for the possibility to identify groups that cannot be said to have common interests, or to identify themselves as a community, and whose only shared characteristic is their historic exclusion from political campaigns, and the consequent perception of them as non-potential office holders. In this sense, quotas might positively impact equality of opportunity to run for office.

Special emphasis, I propose, should be put on establishing quotas at the level of the party as a corrective for substantive inequality of opportunity to run for office. This sort of quotas do not provide a problem for overall democratic legitimacy, as Andrew Rehfeld has argued reserved seat quotas do. On the one hand, they do not introduce a qualification on office, as Rehfeld argues reserved seats do.[79] On the other, they do not curtail voter's choice. They might still need to be combined with the latter, if an additional goal were to achieve descriptive representation. However, if the focus is equalizing the opportunity to run for office, party quotas might be enough.

Compelling quotas upon parties, however, is not without its problems, which might explain why, so far, the tendency within developed nations has been to make them voluntary, rather than compulsory. The main worry is the impact this imposition would have on the role of parties as catalysts of ideology and vehicles for agenda formation, whose freedom of association and self-determination is to be protected for the sake of democracy.[80] Political parties are the gatekeepers of candidate nomination, and, as such, may be vehicles for the systematic exclusion of certain types of persons. Because of this

[79] Rehfeld, "On Quotas and Qualification for Office."
[80] I will explore issues on the matter in Chapter 3 of this thesis.

potential risk, regulations upon them might be necessary to neutralize their potentially negative influence.

Insofar as parties play the main role of filtering the overall pool of willing candidates into the list of nominees amongst which voters will get to choose from, the interest of substantive equality to the individual right to candidacy outweighs the previous normative concerns. Let me provide some examples in relation to the patterns of women and minority groups running for office, to illustrate this dynamic, and provide empirical reason why the adequate locus of corrective measures for the sake of substantive equality of opportunity to the RC is most plausibly that of compulsory party quotas. My examples are drawn primarily from studies on patterns of political ambition formation, political recruitment, and nomination of women and minorities. These have been the groups whose political inclusion has called for more empirical attention, particularly, as I have explained, in view of ensuring adequate descriptive representation. Yet, they can also provide important data for my present purposes when analysed under the lens of equality of opportunity to the RC.

A study in relation to what makes a party superior to another in advancing women's political career, in relation to party leadership and nomination for political office, has found that variations in religiosity across parties explain variation in women's leadership across parties. Parties with lower religiosity and plural membership provide higher chances for women's leadership within the party. The outcome of this is that there is an inverse correlation between party religiosity and women's nomination to parliaments and municipalities. Religiosity, within this study, is taken as a component of the political culture of the party which may or may not be women friendly. [81]

[81] Fatima Sbaity Kassem, "Can Women Break through? Women in Municipalities: Lebanon in Comparative Perspective," *Women's Studies International Forum* 35, no. 4 (July 1, 2012): 233–55.

While women's participation in politics tends to be higher for countries with high GDP, quotas can be employed as an effective affirmative action strategy irrespective of a countries GDP.[82] An example of this is Rwanda, which has surpassed Sweden, known for its feminist politics, in the percentage of women in parliament. As such, at least in the case of gender inclusion in politics, quotas have proven to be a fast-track. Our worries about curtailing democratic freedom through the introduction of quotas may be appeased by empirical results which have shown that a large proportion of the countries with multimember electoral systems that have been labelled as free have some political parties that have adopted candidate quotas.

A pool of eligible is the set of individuals that meet the formal requirements for serving in office. They move to aspirants when they 'effectively select themselves' and express an interest in electoral office. Ambition and resources affect the likelihood of an individual aspiring to office. How candidates then select those who will run is affected by a number of factors such as party rules, and their beliefs of which type of candidate will be more successful in wining votes. Finally, voters choose the candidate that will fill the office in question. Quotas can be established at all three steps. Quotas from 'eligible' to aspirant are meant to secure that there are at least some women among the candidates a party will consider for their nominations. These have nowhere been established at a legal level. This might not influence who the party ends up choosing, nor who will end up in office. Yet, as I have argued, it will secure the worth of the right at a certain level (RC claim 2). They are established by the rules of individual parties. This would be more obvious in the case of candidate selection through primaries, or party caucus, or where there are high levels of transparency in a parties' candidate selection process.

[82] Richard Anker, "Women's Acces to Occupations with Authority, Influence and Decision-Making Power," ILO Working Papers, 2005.

In order to really establish these properly across all democracies we would have to institute very formal levels of party aspirant consideration, which might not be feasible, particularly as it has been shown that parties themselves mobilize and help in determining who amongst the pool of eligible will become an aspirant. Among other things, therefore I believe the stress in correcting for inequality at all levels of enjoyment of the worth of the right should be put on party candidate quotas. This will help modify the party's perception of who might become an effective candidate, and thus allow for more equality at RC claim 2 as well.

Candidate quotas are those that operate in the transition from 'aspirants' to candidates. These require the party's nominee list to include a certain percentage of a given type or group of candidates. In the case of legislative bodies, this can be more straightforwardly instituted by multimember district electoral districts (or mixed systems). But there might be ways of including them also among single member district systems, and for executive offices filled trough election if they are considered as a cross-electoral requirement. That is, if they are meant to be fulfilled in a given span of time, rather than at a single election. They tend to be legally established in Latin American countries, and to be voluntary in Western European countries, especially amongst left-leaning parties.[83]

Overall, the legalization of party candidate quotas has helped open what has been called 'the secret garden of nominations' by making the processes of candidate nomination more transparent and formalized.[84] This, in turn, can enhance substantive equality of opportunity for the RC.

[83] Richard Matland, "Electoral Quotas: Frequency and Effectiveness," in *Women, Quotas and Politics*, ed. Drude Dahlerup (London: Routledge, 2006).
[84] Sefakor Ashiagbor, "Political Parties and Democracy in Theorethical and Practical Perspectives," 2008.

2.6 Conclusion:

In this chapter I have argued that the right to candidacy is under urgent need for analysis under the lens of substantive equality of opportunity. That is, an analysis not only of its legal treatment, but also of the way in which social and contextual factors affect the extent of its enjoyment by all citizens alike. Ironically enough, a concern with substantively equalizing opportunities to many features and resources of our shared life has been in crescendo in the past decades, and we have come to understand this trend as the 'democratization' of such resources. Yet, the Right to Candidacy, as a paramount formal feature of what can we strictly think of as 'democratic' remains very 'undemocratic' in this sense of substantively equal. This, I have argued, is something we should worry about both in terms of granting legitimacy to our political system, as much as in terms of fighting for social justice, more broadly understood.

My argument for the insufficiency for those purposes of merely protecting equality of opportunity in a formal legal sense was built over the consideration of a plural account of the values both for individual citizens and the political society entailed by the idea of the Right to Candidacy as an individual liberty to be protected. I have accordingly provided a four-tier structure through which the relationship between these values, and their belonging to the overall idea of a Right to Candidacy can be best understood. I have then suggested that efforts in promoting equality of opportunity across the citizenry at large ought to be put on RC claims 1 and 2, and that party nomination quotas might help in this regard. If properly addressed at this level, substantive equality of opportunity at higher tier would be taken care of in the best manner possible.

3 Deliberating on representation: remodelling intra-party candidate selection

3.1 Introduction

Intra-party candidate selection mechanisms, that is the methods or ways by which political parties decide who will run for office in a given election as the party contender, vary within and across democratic nations today. That this should be so is justified within widespread democratic theory in terms of the primordial role political parties are held to take within the context of representative democracy in terms of mediation between the government and the citizenry at large.[85] That role is carried out through the many functions that a party plays out within the democratic life of a given policy, amongst which the pre-selection of candidates for office is one of the main ones. While the normative literature on parties and partisanship has been steadily growing in the last decade, in contrast to the previous decades of neglect on the matter by political theorists, this latter issue has been overlooked.[86]

In order to properly fulfil their role as candidate selectors, the extended practice seems to indicate, they are to be left unencumbered by the state. Or, more specifically, any proposal of state intervention into the internal organization and decision of parties should carry a heavy burden of justification against the presumption that political parties'

[85] As Matteo Bonotti has claimed: "Political parties occupy a unique intermediate position between civil society and the public political realm and provide a hybrid and semi-institutional connection between the two domains." Matteo Bonotti, "Conceptualising Political Parties: A Normative Framework," *Politics* 31, no. 1 (February 10, 2011): 19–26.Also for this conceptualization of parties a mediators see Jonathan White and Lea Ypi, *The Meaning of Partisanship* (Oxford: Oxford University Press, 2016), p.34.

[86] Indeed, political parties have been an area of special interest for political scientists, who study them from the lens of electoral systems and government constitution. Yet, it has only been from the last decade onwards that their normative aspects ave attracted attention from political scientists. For the most important developments within this emerging field, from which the issue at hand in my paper is absent see, by date of appearance: Nancy L Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton: Princeton University Press, 2008), Russell Muirhead, *The Promise of Party in a Polarized Age* (Cambridge, MA.: Harvard University Press, 2014), White and Ypi, *The Meaning of Partisanship*. and Matteo Bonotti, *Partisanship and Political Liberalism in Diverse Societies*, vol. 1 (Oxford: Oxford University Press, 2017),

freedom of association is to be respected as much as possible. Such claim, though in my view fundamentally correct, can be misleading, and can lead us to overlook important areas of normative analysis within intra-party practices. The claim, as I take it, is that the state should not coercively interfere or arbitrate with parties' internal structure and decision making. However, that is not the same as saying that there is no right or wrong way for a party to organize and make decisions within themselves. In other words, the claim is that governments have no business in forcing political parties to behave in one way or another, be it the right way or not. Yet, this is not to say that Political Philosophy has no business exploring and trying to determine how political parties should behave, not so much to provide guidelines, and less strict directives, but rather to provide general principles from which they can prudentially draw upon to guide their practice. This has tended to be overlooked, or misapprehended.

The purpose of this paper is to partially carry out what should be seen, and has yet not been, an inescapable task for democratic theory today, by normatively analysing one of the primordial roles of political parties: that of candidate for office selection. I do this in a systematic manner by analysing the role played by parties in terms of the justifiability of representative democracy as a system of government. The very possibility of representative democracy, as an indirect type of democracy, can hardly be said to rest on firm grounds, either empirically or theoretically. Their peculiar place within this system, along the lines of the general shape the latter tends to take today, I will argue, confers a particular responsibility upon political parties in order to fulfil their civic duties that is to be carried out within their processes of candidate selection, the aspects of which might otherwise be left normatively unspecified. This duty is that of carrying out exercises of cross-party deliberation on the specific meaning that the party attaches to the idea of representation, and to select their championed candidates accordingly.

My analysis begins by profiling what can be said to be the place of political parties within the overall structure and justification of representative democracies. I discuss how their role as funnels for candidate selection seems to play against, rather than in favour of representative democracy itself. I then argue that in face of the plausible case for denying the normative possibility of representative democracy that has accompanied the empirical instauration of this form of government since its very beginnings, political parties ought to actively engage in shaping the contents of the idea of representation. This will allow for a pragmatic solution there where theoretical debate might need to remain pluralistic. This is to be done through intra-party deliberations on the idea of representation they want to embody.

Deliberation might not lead to consensus, but at the very least will provide the potential for the representative idea that the party finally endorses (even if through other means) to be more robustly informed. This will allow it for the decision of how the abstract and ambiguous idea of representation is to inform office-holding to be assembled by the citizenry, and the final choice to be in the hands of those who are to be represented in one way or the other. By embracing this role, political parties will be able to legitimize their intra-party selection practices, that might otherwise need to remain normatively unspecified for parties to have the flexibility they need to thrive within continuously changing political landscapes.

3.2 Representative democracy and the problem of intra-party candidate selection

The common stories we tell ourselves about how representative democracy works, and why we should want it, tend to be very simple. They are usually some version of the following: citizens are free and equal persons and as such should have an equal say on the political matters under which their lives will be structured. Modern states are

characterized, among other things, by having large populations and complex patterns of labour distribution. Because of this, equal direct participation in politics is virtually impossible. The solution then is to split the original citizen right to equal political participation into two main democratic rights that all share equally: the Right to Vote (RV) and the Right to Candidacy (RC).[87]

Such a separation introduces the division of labour into political participation,[88] and in this new state of affairs, only a select few will carry the rights and burdens associated with direct law creation and execution. The citizenry at large will retain their right to an equal say anyhow because they: 1) will be in charge of deciding, through electoral mechanisms, who is to fill in political offices (right to vote), 2) will have an equal right to compete themselves for those positions (right to candidacy), and 3) will be 'made present'[89] in the processes of law making and executing by those who take political office who, in consequence, are termed 'representatives.'[90]

When representative democracy is described in these low-resolution terms,[91] it turns out to be rather straightforward to justify it, along with the distinct rights that

[87] That is, unless they fall into one or more of the categories usually accepted as reasons to be denied or deprived from either or both of these rights. For most current countries this are things like: not being a resident of the polity, being, and sometimes having been, convicted of a felony, and being under a certain age. On this matter, see Chapter 1 in this thesis.

[88] This division of political labour can in turn have other benefits, in terms similar to the economic division of labour. Among other things, it can allow for specialization. See for instance Howard Williams' contribution in Matteo Bonotti et al., "In Defence of Political Parties: A Symposium on Jonathan White and Lea Ypi's *The Meaning of Partisanship*," *Political Studies Review* 16, no. 4 (November 15, 2018): 289–305.

[89] To echo Hannah Pitkins famous analytical definition of what it means to represent: 'to make present again'. Hanna Pitkin, *The Concept of Representation* (Los Angeles: University of California Press, 1967).

[90] This is not recognized by any country in the world in the form of a protected right. However, it could also be conceptualized as a right, in parallel with the other two, "a right to representation", as Nadia Urbinati does in her Urbinati, *Representative Democracy: Principles and Genealogy*.

[91] The canonical place where democracy is thus presented is probably Robert Dahls' *Dilemmas of Pluralist Democracy* (New Haven: Yale University Press, 1982).

comprise it[92], in terms of citizen agency and/or equality. [93] Echoing Early-modern social-contract theories, the underlying idea tends to be a version of citizens-as-voters transferring their original political power to a small group of citizens,[94] who are in turn justified in exerting coercion over the former. This justification stems from the fact that a) they have been 'authorized' by the citizens-as-voters in doing so through their participation in the electoral process, b) they were themselves selected from amongst the citizenry, in their status of citizens-as-potential officeholders, c) they remain ultimately accountable to the citizens-as-voters who they represent, and d) citizens-as-voters and citizens-as-potential officeholders share those modes of being in terms of equality of opportunity.

Yet there is a fundamental fact of how existing representative democracies today operate which tends to be overlooked in the previous simplified justificatory image. This is, that the process of authorization by which citizens-as-voters confer power upon the elected group of citizens-as-office holders is *mediated*, rather than *direct*. Indeed, citizens-as-voters do not select those who are to fill elective offices directly from the general pool of (willing)[95] citizens-as-potential officeholders. Instead, they choose from a small list of pre-selected candidates. This smaller pool is filtered through political

[92] I am here referring strictly to the RC and the RV, not to the whole range of rights that are sometimes considered 'democratic rights', which would also include at least the rights to freedom of expression and association. For an example of this broader conceptualization of democratic rights see Brettschneider, *Democratic Rights: The Substance of Self-Government*.

[93] For equality-based arguments see the now classical Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder, Colo.: Westview Press, 1996).

[94] Notice that the subjects of agency, 'citizens', form part of both groups. The locus of difference is the activity at hand.

[95] Insofar as the right to candidacy is not also a duty and is as such exercised freely. In some countries, like Australia, Argentina and Belgium, the situation for the right to vote is different. It is both considered a right and a duty, and as such it compelled. Arguments in support of this are varied but tend to be related to the need to legitimate electoral process either by securing 'sufficient' overall participation, or for guaranteeing the inclusion of disadvantaged groups that tend not to vote otherwise. For an argument of this latter type see Annabelle Lever, "Compulsory Voting: A Critical Perspective," *British Journal of Political Science* 40, no. 04 (2010): 897–915. As long as there continues to be a surplus in the supply of willing candidates, and assuming this is diverse enough to represent the citizenship, there seems to be no reason to make political candidacy compulsory in anyway. The situation is different once a candidate has won the race, for then he not only has the right to take office but also the duty to do so.

parties.[96] This additional fact at the very least asks for some amendments on the original style of democratic justification. Indeed, these role as played by parties implies that processes of authorization and power-transfer, does not flow directly from the hands of the citizens-as-voters into the hands of the victorious citizens-as-potential officeholders. It flows, rather, from the hands of political parties, into the hands of citizens-as-voters, in the form of a ballot list, and only then from the latter into the victorious party-preselected citizens-as-potential officeholders.

If we bring this higher-resolution image of democracy to the forefront, we might then question the presumption of original equality of political influence amid the citizenry which is to be transferred into the hands of the select few. We may be tempted to answer that the justificatory landscape has not been changed substantially by the higher resolution image of democracy. Indeed, if there is, at least, formal political equality not only among citizens-as-voters, but also amongst citizens-as-potential party members, the justificatory landscape will not be substantially altered. Even when the direct relation between citizens-as-voters and the pool of eligible candidates is now being mediated, the transfer of powers is between the same original set of citizens or political agents, who can now exercise an additional function: that of being party-members and, as such, belong to what we could call for our current purposes the 'selectorate'.[97]

However, it is the case for most parties around the world that being a party member does not suffice for being part of the 'selectorate'.[98] Intra-party rules usually

[96] And, where independent candidacies are allowed, these latter are filtered through the set of regulations for the recognition of these sorts of candidacies. In countries where independent candidacies are permitted, they tend to be the exception rather than the rule. As such, I will not focus on them on the paper.
[97] I do not mean a *selectorate* as an overall form of government as in Hong Kong. I am rather referring to the set of citizens within what can widely be considered a democratic regime, who have the right to narrow down the pool of those amongst which voters will be able to choose from.
[98] For a comparative survey on the matter see Ashiagbor, "Political Parties and Democracy in Theorethical and Practical Perspectives." Also, it is worth noting that, even where there are delegates charged with selection tasks, it is many times the case that the candidates they choose from have to be pre or post approved by the party leadership.

determine that only the party leaders, or otherwise a select few (usually called *party delegates*), will have agency in candidate selection. The problem that this poses for our original image of representative democracy legitimacy arises from the fact that such intra-party positions are not usually subject to what we would recognize as democratic mechanisms: at the very least they would presuppose open and fair procedures of selection, and minimal formal equality of opportunity for all party members. These procedures, we might want to add, should mimic the countries mechanisms of democratic selection of office holders, by ensuring equality of opportunity, at least as the formal level, for all party members to participate in the selection of delegates and party leaders, as well as the formal equal opportunity of themselves being selected for those procedures.

But parties tend not to be subject by constitutional or electoral law to these, or any other, democratic standards in the selection of those who are to fill in positions of power within them, not even those that pertain to the power to select parties' nominees for political office. Because of this, the high resolution image of modern representative democracy, in the way we see it as commonly functioning in practice today, does significantly change the normative landscaper in relation to the original low resolution image of democracy. Indeed, it is no longer the case that citizens-as-voters are selecting citizens-as-candidates to fill in political office. Rather, the way in which we see representative democracies operating today is more accurately this: in order to fill in electoral offices, citizens-as-voters select amongst the group of candidates endorsed by the leaders and/or the delegates of political parties.

The differences between the first and second scenarios are considerable. The equal opportunity of all citizens to select those who will occupy offices, and to contend for such offices upon which democracy tends to be justified, at least from a procedural perspective, is there no longer. What we now have is some citizens wilding a significantly greater

amount of power than the rest in selecting who will fill in electoral offices, by having the nomination of candidates in their hands, plus the introduction of formal barriers upon who can be a candidate in relation to party statutes, and potentially changing regulations for each nomination period in turn.[99]

There has certainly been a push towards the democratization of intra-party leadership selection procedures, as of overall intraparty candidate selection mechanisms,[100] within the past decades. This has answered not so much to the overall interest in the democratic quality of electoral office-holder selection, but rather to parties' individual interest in enhancing their approval within the population at large, and in view of preserving and enhancing their base. In consequence, these efforts have not been systematic. And yet, we need to ask whether they should be. What is more, we need to ask whether for the sake of democratic legitimacy, should a state not compel political parties to establish and follow democratic procedures when nominating candidates for political office. The latter might include include the procedures for selecting their party's leadership and delegate platforms, which is democratically relevant when nomination of candidates for office is to stay within their power.

The general trend for a lack of political power selection mechanisms is certainly not without its reasons. Bluntly put, intra-party freedom for self-determination is based on the right to freedom of political association, which also plays a fundamental part within the overall legitimacy of the system. Indeed, one of the main functions of political parties within representative democracies is certainly that of filtering out candidates for voters to chose from. This, per se, does not introduce inequality of opportunity in choosing who will fill in political office. There is need to have an institutional way of narrowing down

[99] An example of a party operating on this basis is the Mexican Institutional Revolutionary Pary (PRI).
[100] See Reuven Hazan and Gideon Rahat, *Democracy within Parties: Candidate Selection Methods and Their Political Consequences* (Oxford: Oxford University Press, 2010).

the pool of candidates from the potential whole of the citizenry, to a sizeable few for reasons of efficacy and cost in office holder selection procedures, and in order for the choice to be set within the boundaries of voter's epistemic potential.[101] And, if the procedure through which such a filtering is done is formally open to the formally equal participation of citizens as voters, as I have explained might be the case for political parties, then there is nothing to worry about.

It is certainly the case, however, that there are other ways in which such a narrowing down could be done which might perhaps be even fairer. David Estlund has famously claimed that we value procedures for democratic decision-making not only in terms of their fairness, or otherwise we might rather toss a coin.[102] We can in parallel claim that we believe there is something of value in the way political parties narrow down the candidate pool, otherwise we would rather resort to a lottery which would be straightforwardly fairer. And in there lies the reason why we value political parties' freedom of association and self-determination, unencumbered (or encumbered as least as minimally as possible), by the state.

Fundamentally, the role of political parties within representative democracies is to channel the political views of the polity, or of a part thereof, and formulate a political agenda on the basis of it. As Lea Ypi and Jonathan White have put it, partisanship advances "a shared interpretation of the public good and how to shape public life accordingly."[103] Their right to filter out the pool of willing candidates into a select few

[101] I am not saying here that this is to be done for the sake of filtering out voters possibly 'dangerous choices', in the manner that Andrew Rehfeld describes some specific mechanisms of candidate qualification for office. Rehfeld, "On Quotas and Qualification for Office." Rather to the fact that no human being is capable of making a meaningful choice (that is, excluding random selection or bias), amongst millions of people. Whether she can be expected to meaningfully consider only two alternatives or up to 20 might be debatable. But the fact that there is to be a significant narrowing from all citizens who want to contend for office to a sizable few if voters are to choose in a reasoned and informed manner (whatever exactly we mean by this) remains.

[102] Estlund, *Democratic Authority: A Philosophical Framework*.

[103] This can be differently understood in relation to whether the party is considered more akin to a faction that would only see for the interest of a select few, or whether the party is understood to be formulating

amongst who the voters will ultimately select electoral officeholders from would seem to be justified upon the basis of that role (though, as I have mentioned, this has not been addressed in the normative literature). Political parties ultimate end could be said to be that of bringing their political platforms and agendas to bear on, or even fully determine the course of political decisions that will ultimately govern the polity. Their choice of candidates presumably will then answer to the need to get into office those that will carry out the party's agenda or decide in line with the party's platform, or more broadly to represent their party within the processes of making and executing political decisions. That can be said to be what properly underlies the idea of political parties' role being that of 'winning elections.'[104]

Does this picture of political parties as catalyzers of public interests and beliefs into a public agenda, justify their role as funnels of candidate selection, even when that constitutes an abridgment of citizens-as-voters equal input in the selection of office holders? A possible answer, in line with what Nadia Urbinati might claim,[105] is to claim that, far from messing up with democracy's legitimacy by abridging the liberty of voters to choose who will rule them, the activities carried out by parties actually make the polis

principles that would attract the whole of the population. For Ypi and White, the idea of partisanship proper (as the activity of being a partisan, which is their normative unit of analysis, rather than party) consists in that of sharing a set of ethical commitments with a group. Such ethical ends, they claim, are irreducible to factional interests, rather they ought to be generalizable and reflect the common interests. White and Ypi, *The Meaning of Partisanship*.p.30

[104] One of the classical views of political power competition, stemming from Joseph Shumpeter's seminal *Capitalism, Socialism and Beyond* is that political parties' role is to orderly contest the transition of power, so that violent power struggles are kept at bay. As he claimed: "The first and foremost aim of each political party is to prevail over the others in order to get into power or to stay in it." (New York: Harper and Row, 1956). p.279. Democratic theory since has however studied more closely the processes involved in political decision making and disentangled the many factors that play a part within it. In addition to the brute struggle for power, there are also epistemic, identity, emotional etc. factors that come into play, and which allow for a more complex understanding of the role that political parties play in the articulation of the public agenda and the consequent filtering out of candidates for office.

[105] Urbinati's claim is more general in relation to how representative democracy operates, but it can very plausibly be analyzed in terms of the role parties play within it. For Urbinati, the indirectness introduced through representation "plays a key role in forging the democratic character of politics" (p.5) and "constitutes a comprehensive filtering, refining, and mediating process of political will formation and expression […] helps to depersonalize claims and opinion, which in turn allows citizens to mingle and associate without erasing the partisan spirit essential to free political competition or obscuring the majority/minority divide." (p.6) in *Representative Democracy: Principles and Genealogy*.

more democratic by introducing more subtle ways in which the will of the people is articulated.

Also, we could claim that if the pool items to select from is not constraint enough for voters to deliberately decide upon, they cannot really be said to have a meaningful choice at all on which to exercise their equal power as political agents, for when the set of items is not constraint, they cannot really engage in the process of discernment between alternatives that leads to free choice. Rather than abridging their freedom, political parties take the burden of cherry picking amongst willing candidates in relation to what would better serve the interests of voters,[106] making the choice not only more convenient, but even possible for them.

Whichever of such answers we might find satisfactory, what cannot be denied is that there is a significant disparity in candidate choosing between citizens in general, and those that conform the 'selectorate' within political parties. Such a difference in power might indeed be justified in the ways I have sketched, under the assumption that parties actually fulfill their role. Yet, the high degree of difference in the distribution of power to select candidates also introduces the great peril of corruption and injustice. Because of this, it is hard to see how political parties' (sometimes exclusive) power to nominate candidates for office can be justified merely on procedural grounds. We also need to have a clearer picture of the sort of political candidates that we should expect to come out from parties funneling procedures, in such a way that voters are not presented with a situation in which they have to choose the 'least bad' amongst the choices that have been made available to them. In other words, the question of the legitimacy of parties' selection of

[106] There is a lot of debate on exactly what is and/or should be at play in processes of democratic decision-making: whether it is individual or group interests or preferences (expressed or genuine), wether there is anything to the idea of a general will etc. For the purposes of this paper I will overlook those, otherwise very important, subtleties.

candidates is not satisfied merely by asking what type of procedures parties use to select their candidates, but also by looking at what kind of candidates they select.[107]

3.3 The civic responsibility of political parties in their filtering candidates for office

Presumably, as I have claimed, political parties fare better than lotteries in terms of justification because they introduce epistemically relevant criteria (such as citizens' average interests) into the process of candidate funneling. But the discontent and even mistrust that ordinary citizens have for political parties, along with their dislike for the candidates that end up in the ballot puts the matter into question.[108] As such we need to question what political parties' duties to citizens-as-voters are in the overall process of candidate funneling. And then ask the further question of whether such duties are to be enforced by the state.

When it comes to people's discontent, the main problem tends to be formulated in terms of people not feeling that the candidates they get to choose amongst "represent them". As such, it would seem that parties should have a certain duty to guarantee a certain "representative-potential" in the candidates they select for office. But representation is a slippery subject, as the ongoing debate on representation attests to. It is not obvious that such a debate will end any time soon, and least of all that it should. After all, it might be better if we allow for there to be what Michael Saward has termed "shape-shifting representation", to allow for our models of representation to change

[107] At the very least, as David Estlund has claimed in relation to democracy, which, according to him we value not only because of its intrinsic fairness as a procedure of choosing, but also because it tends to do better than other fair systems (in the case of Estlund's argument, because democracy tends to be better epistemically). See his *Democratic Authority: A Philosophical Framework*.

[108] A paradigmatic recent case was that of candidate choice dislike in the 2016 presidential election in the United States, which, as reported by the PEW Research Center, was the lower in decades. See for example their analysis as issued both prior and after the election: Hannah Fingerhut, "Already-Low Voter Satisfaction with Choice of Candidates Falls Even Further," 2016, and Gustavo Lopez and Antonio Flores, "Dislike of Candidates or Campaign Issues Was Most Common Reason for Not Voting in 2016," 2017.

through time in order to account for the changing needs and composition of the citizenry. As he has claimed, "[p]olitical representatives often need to be, or at least appear to be, different things to different people. […] representative claimants may put themselves across (or be put across) as different things to different people at different times in different spaces."[109]

However, due to the fuzziness of the concept of representation, and its need for the overall legitimacy within the system (which is sometimes overlooked within current democratic theory given the primary focus on the legitimacy of "democracy" simpliciter), its particular contents as tacitly spelled out in a political party's rationale for selecting a given candidate over others need to be subject of deliberation.

In this sense, the deliberative turn within democratic theory that aimed to go beyond the mere procedural fairness of democratic procedures, understood as aggregation, need to be inserted also to intra-party selection procedures for candidates. Originally, the literature on deliberative democracy eluded consideration of political parties as 'locus' of democracy. Indeed, given that the role of political parties was understood mainly in terms of the competition and aggregation of votes, and, as such, primarily as a component of aggregative democracy, deliberative democracy was rather intended to supplement the work of parties. There has been a very recent shift in this tide, however, and political parties are viewed more favourably by deliberative democrats as appropriate, and even as necessary, loci of deliberation within democracies.[110]

[109] Michael Saward, "Shape-Shifting Representation" 108, no. 4 (n.d.): 723–36,

[110] Indeed, literature on the matter covers less than a five-year span. Examples of it are: Enrico Biale and Valeria Ottonelli, "Intra-Party Deliberation and Reflexive Control within a Deliberative System," *Political Theory*, October 20, 2018, Fabio Wolkenstein, "A Deliberative Model of Intra-Party Democracy," *Journal of Political Philosophy* 24, no. 3 (September 1, 2016), and the very recent workshop hosted by the ECCPR ON "Political Parties and Deliberative Practices: Use and Abuse." Hosted by Vincent Jaquet and Sorina Soare at the Catholique University of Lovaine on April 8-12, 2019.

Recent studies on deliberation within parties have emphasized the need for intra-party deliberation as a way of legitimizing their role as mediators between the citizenry and the government. However, they have not focused enough[111] on the way in which intra-party democratic deliberation can confer legitimacy on the process through which candidates cherry-pick their nominees from the pool of potential candidates (that is those who face no formal restrictions to their candidacy and who in addition are willing to run and, potentially hold office), and present them as the options for the voters to chose upon. I argue that implementation of a particular type of deliberation is necessary for this. The legitimation this latter would confer upon-intra parties candidate selection mechanisms would obtain, irrespectively of how democratic the aggregative mechanisms for 'candidate' (as well as for the selectorate) selection are.[112]

Intra-party deliberation on policies and on candidate-selection proper needs to be supplemented by the model of representation endorsed by a party at a given time. By 'model of representation' I do not mean which one and only of the different modes of representation that have canonically been identified by the literature, and differently defended on normative grounds, as possible ways in which the idea of representation could or should be understood rather what the idiosyncratic model of representation the party is espousing at a given time is. This latter might happen to be a clean-cut model,[113] among the ones that have been defined by the literature. But it can also be a hybrid of

[111] Indeed, the selection of policies and candidates tend to be 'merged' together.

[112] I oppose constitutional constraints that define the types of aggregative mechanisms available to parties for the sake of ensuring their 'democraticity' parties need the ability to remain 'flexible', and answer to the changing nature of times, of the electorate etc. The tendency has been to democratize them under certain patterns (for an empirical survey on the matter see Hazan and Rahat, *Democracy within Parties: Candidate Selection Methods and Their Political Consequences*.), and even to increase instances of candidate selection through primaries, in order precisely to respond to what are perceived as demands of the electorate, but we must allow for the possibility of this to change and for the party to present its face to the electorate accordingly. This will also allow parties to function as experimental spheres for different sorts of collective decision making, without burdening such fluidity with the difficulties of constitutional reform.

[113] An example of this is the way in which the US democratic party has recently espoused the concept of *descriptive* representation, characterized by their selection of women candidates for the House, and even for the presidency in the 2016 and 2018elections.

these, and also present new representative aspects all-together, as a response to the continually changing nature of political circumstances.[114]

3.4 The democratic problem with the idea of representation

The idea of political equality, or more specifically, of equality of political power, at the basis of democracy is allegedly preserved within what we understand as indirect democracy, as I have explained, through two democratic phases. On the one hand, the selection of office holders is carried out 'democratically' by securing equality of opportunity in voting, and in running for office. On the other, the activity of 'office holding' is also made democratic by imbedding it with the characteristic of being 'representative'. That is, by carrying out the activities of office-holding, namely the drafting and execution of law, in a way that is 'representative of the citizens.' In the terms of Hannah Pitkin's seminal analysis of the concept we could say, by making the citizens "present again"115 in the activity of the office holder when he enacts a law or executes it.

In this way, equality of political power is not fully annihilated after elections have taken place, as Rousseau thought of the English people, who "regards itself as free; but it is grossly mistaken; it is free only during the election of members of parliament. As soon as they are elected, slavery overtakes it, and it is nothing."[116] If that were the case, we would not be dealing with indirect or representative democracy, but rather with an elective dictatorship, oligarchy or something on that front. But what exactly makes for "representativeness," as a necessary characteristic of the way in which office is held in

[114] After all studies of representation have more than anything tried to capture what is already lived, representation in the models in which is already seen to happen.
[115] See note 5.
[116] Jean-Jaques Rousseau, *On the Social Contract* (New York: Dover Publications, 1762).

indirect democracies? This is where explaining how so-called *indirect* or *representative* democracy is democratic gets extremely tricky.

One important question that surfaces on the matter is who is a given representative exactly to represent? That is, whether he should represent those who voted for him, or the whole of his constituency? Whatever the answer given is, the next question to be answered is how is he to do so? The idea that an office holder is representative merely by taking any version of the citizens' (or the appropriate subset of the citizenry) interests/preferences and/or needs[117] into account when deciding or executing[118] law and public policy is not enough for that trait is to be expected also from the activity of what would otherwise be a benevolent dictator or a benevolent oligarchy.

There is, then, the further question of what it means to take those interests/needs/preferences into account. Should the representative merely "consider" them when taking the decision, and then also consider other possible options and decide on his best judgement? Or should he directly 'obey' the citizenry's wishes, however this are conceptualized.[119] Because of this, the trait of representativeness as a characteristic of office-holding in indirect democracies is necessarily understood to encompass both consideration of citizens interests, plus some kind of accountability and responsiveness

[117] There is debate of which amongst this we might be interested in when discussing representation. Particularly as individuals might have an interest in something they do not need, or even that makes them harm, and vice versa. Also, because citizens might not know, or might not express for the representative to know, what such needs and or interests are. Discussion of how representatives are to behave on the face of this facts conforms a significant amount of the literature on the theory of political representation. The temporal dimension is usually also added to the matter as we need also consider whether the office holder is expected to anticipate what the represented interests/needs/preferences will be, or act on behalf of what they have expressed at the time etc. For a brief portrayal of these debates see the entry Suzanne Dovi, "Political Representation," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy*, 2014.

[118] I include the matter of execution, even when the power held by the executive power differs from one type of democratic system to the next, usually as distinguished into "parliamentary" and "presidential" democracies, because the level of execution of law and public policy also entails a certain amount of prudential reasoning and decision that is on the hands of the office holder, and not of the citizenry at large.

[119] This basic distinction has traditionally been conceptualized as the trustee and delegate models of representation. A delegate representative would simply carry out the whishes of his constituents or voters, and the trustee would in addition consider other options and decide upon what he finds to be best for them, irrespective of whether that corresponds to what they believe or have asked for.

to those interests. That is, the citizens should remain throughout the whole process as the judges of the activity of office holders, and the latter are to change direction accordingly. Yet debate on the appropriate fulfillment of the ideas of accountability and responsiveness is also wide.[120]

Recent additions to the debate on representation have tried to avoid the problems presented by identifying, collecting, and aggregating preferences/interests/or needs, and being accountable and responsive to their satisfaction, by characterizing representation on a different manner. Under this new conceptualization of representation what is to be represented is no longer the 'wishes' of the constituents, but physical or identity traits of them, or more specifically of the different groups that conform them. This has been termed 'symbolic', or more specifically 'descriptive' representation.[121]

3.5 Why deliberate on representation?

If there is any overarching conclusion that could be extracted from the academic theoretical debate on political representation, it is that it 'political representation' is a dynamic notion, subject to continual change and redefinition through real practices. Through its many incarnations it may serve democracy differently, and whether a type of representation should be preferred to another cannot be fully established *a priori*.[122] But then the question will be who is well-fitted to make such a judgement?

[120] The canonical text on the matter is Pitkin, *The Concept of Representation*. More recently important developments has been carried Mansbridge, "A Selection Model of Representation."
[121] There can be mid-way approaches as well. Ann Philips for examples argues for her "politics of presence" on the basis of people of a given group being best informed of the problems and experiences of that group and as such, are the most adequate to bring them to bear on law and policy decisions. Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1998).
[122] This is not to claim that political representation theory is useless, rather that it cannot give the final verdict for any given concrete political situation, as is the case between political theory and practice more generally.

Our first instinct might be that what type or types of representation should be expected from elective office holders at a given time should be a choice for the citizens-as-voters to make. Such a decision is, after all, part and parcel of their activity as office-holder selectors. Yet, as I have explained, such an activity is mediated by political parties who nominate a sizable number of candidates for the voters to choose upon. Because of this, the choice of representative models is also mediated by parties, rather than in the hands of voters. Yet the choice of representative models as embodied in the choice of a given candidate is fundamental for the shape the democracy will take, and as such should be as clear to the voters as part of the political ideology and political agenda espoused by the party in general, or individually by the selected candidates.

Inasmuch as that is the case, the endorsement of a representative model over another should be the result of an ongoing process of intra-party democratic deliberation, irrespective of the particular candidate selection procedures of a given party. This, I claim, is necessary to legitimate political parties' activities in the funneling down of the pool of potential candidates that voters will get to choose from. This is, in addition to the overall ideology and agenda formation that has been claimed as justification of political parties' role within representative democracies, in such a way that might even make for them to be more 'democratic' than otherwise.

When intra-party deliberation on representative models is secured, the worry with the overall legitimacy of intra-party candidate selection procedures will diminish, assuming that this latter is carried out by taking the former into account. This is because substantively the model of representation, in addition to the particular political agenda, that voters will ultimately get to choose upon will have been the result of a democratic deliberation of the party, in its role as the mediation between the citizenship and the government, which I have described at the beginning of the paper. In this way, even when

there might not be any continuity between aggregative measures within the party and outside the party (which is more obvious in the more extreme cases where party leaders alone select electoral candidates), there can be continuity within the processes of democratic deliberation on representative models within political parties and the citizenry as large. This, it has been claimed, ought to be the case in relation to agenda and ideology formation.[123]

In this way, an argument for freedom of association for political parties that would allow for them to freely choose their leadership selection and even candidate selection mechanisms even in ways that steer far from aggregately democratic mechanisms would still stand. In other words, intra-party candidate selection (along with leadership selection) rules should not follow state determined regulations. Such a freedom of intra-party operation provides the preconditions for parties' adequate fulfillment of their roles within representative democracies. This in turn will allow for flexibility to the contents of 'representative-potential' that a candidate is meant to have, rather than imposing what would otherwise be an extension of constitutional qualifications on candidates.

The further necessary discussion on the shape of the deliberative procedures on representative models that should be embodied within parties is a discussion for another day, though there is enough literature on deliberative models upon this can very plausibly draw upon. The shape this is to take is not irrelevant in terms of political legitimacy, but the purpose of this paper was to provide a first approach to justify deliberation on representative models as a necessary task for political parties in light of their role as candidate selectors. Once this first case has been convincingly put forward, we now have ground for the necessary ensuing discussion on the how this is to be done.

[123] See for example Fabio Wolkenstein, "Intra-Party Democracy beyond Aggregation," *Party Politics* 24, no. 4 (July 21, 2018): 323–34.

3.6 Conclusion

The present paper has made a case for a palliative answer to two distinct, yet interrelated problems. As I have discussed, party-based representative democracy, of the sort most expanded around the world, faces the normative challenge of justifying their role as pre-selectors of candidates for office. Indeed, office holder selection through elections is meant to secure the representation of the voters, who freely choose who is to fill a given office. The pre-selection of ballot nominees carried out by parties curtails such a freedom for voters. As I have argued, this problem is not solved through a conception of party membership as an open possibility for all citizens-as-voters. The reason for this is that it is a prerogative of parties to decide on their method of selection of their endorsed candidates for office, and these preferred methods many times exclude participation of all the members of a party. In this sense, becoming a party member is no guarantee in itself of participation in the intra-party selection of candidates for office.

I then defended the right to freedom of association for parties, in terms of, among other things, the need for them to be able to articulate their own ideologies, platforms, and agendas with as much autonomy as possible. Such a right should be understood to cover the freedom to select their internal methods of candidate for office appointment, for both those processes and their results (the ballot names) will in themselves incarnate a party's platform. And formulating such ideologies and agendas is what justifies the role of political parties as mediators between the voters and the government. The voters can then not only vote for a person, but also for a platform, and thus the activity of parties constitutes a sort of shortcut to a general will formulation.

Yet I have pointed out to another problem which directly impacts this one. That is that the fact that not only what is to be represented (that is what platform, ideology etc.), but also *how* it is to be represented is a debated and debatable matter within

representative democracies. And such a debate, as I have pointed out, is not only an academic matter, but a political matter on its own accord. In these sense, it falls on the shoulders of the parties to foster deliberation on the matter amongst all its members, which in turn could inform the decisions on the nominees for office.

4 Conclusions

The lack of a comprehensive normative approach to the Right to Candidacy (RC) remains to this day an important study gap for Political Philosophy. The present thesis, if successful, would have barely made a dent on such an important project. The case for the importance using and urgency of engaging with the Right to Candidacy from the standpoint of normative Political Philosophy has already being made at the outset of this pages, and there is no point in repeating it here. Rather I wish now to bring into the attention of the reader the broader landscape within which I understand each of the chapters of these thesis to fall into.

It is my hope that engaging with the broader landscape within which I understand my work will allow the reader to better make her mind in relation to the scope and limits of each. It should provide her with a better sense of how, when, and ideally why each of the claims I have made might have to be nuanced or given up entirely. I will then round up such exposition with a roadmap of what I find to be the priorities for any work that follows mine. Both things can at the very least provide matter for disagreement and additional debate, which itself will further the philosophical study of the RC. Without further ado, let us then dive into these matters.

The present thesis has defended three claims in relation to the Right to Candidacy. These claims are independent from each other, insofar as one or the other might be false,

without for such reason entailing that the other two are. Nonetheless, as is to be expected of a coherent thesis, each of these claims springs from a common underlying philosophical conception of political life, particularly a common approach to political rights and democracy.

The main features of this approach have already been hinted at within the core chapters. I intend now to present my approach in a more systematic manner, although still brief and limited given its role within these concluding remarks. After sketching my philosophical approach to political rights, I will point out how each of the claims I have defended within this thesis spring from it. In a sense, what I am about to do here is partially to reconstruct my work backwards. While each chapter heads off from the consideration of a specific normative problem as pertains to the RC, I will now make explicit the underlying story I have made to solve them to show how, even if they are mutually independent problems, they can be integrated within a coherent whole.

By doing this, I aim to provide the reader with some of the tools I believe to be adequate and necessary to evaluate my present work *as a whole*, rather than each chapter independently, as she will already have done. This way, even when the reader might encounter falsity in one or more of the claims I have sought to defend, she will get a better sense of where my mistake has come from. And, more importantly, she will have a blueprint of how one might go on correcting it. As it happens, she might turn out to find fault with the blueprint altogether, but then, if she is right, we will at the very least have clarity on where I went wrong, and on how future studies on the present topic should not go about, and why.

4.1 Synthesis of thesis arguments

Let us recapitulate first the three main problems in relation to the right to candidacy, and what I have claimed to be their proper solutions. Each of them has been dealt with by each core chapter of my work in the following order.

First, I overviewed a constitutional law issue that has been commonly faced by different countries: the question of whether the Right to Candidacy should be formally qualified in terms of education and/or minimum age. I answered that it would be unjust to have these types of qualifications in democracies of the kind we have today given the material impossibilities we face in developing an educational standard or test, or determining a minimum age, that would reliably track down who is prepared for office. The risk of accidentally leaving out those who are capable does not outweigh any benefits in terms of government quality that this course of action might be expected to deliver.

Other things equal, if it were indeed possible for us to do that, then we should do it for the sake of ensuring government quality (that is the ability of government to fulfill its goals) to the best of our abilities. Yet, I noted, this might never be possible for us given the complexities of both the development of individual human potential, and of political life, which preclude any epistemic certainty as to who would be those able to adequately hold office at a given time, and less so if what we want is a rule that applies across time, as is the nature of constitutional law. For these reasons, I concluded, we are better off leaving the eligibility pool as broad as possible at a broad constitutional level and trust it upon the voters (mediated perhaps by political parties) to make the prudential judgement as to who might be able.

The second problem my thesis faced was that of the empirically attested disparity of substantive opportunity to exercise the right to candidacy, along with the normative question of what should be done in face of this. I framed the issue in terms of being both

a problem of political legitimacy, and a problem of social justice. I portrayed the depth of the problem through an analysis of the different stages, within what I claimed to be a four-tier structure, at which the right to candidacy could be exercised. The impossibility of substantively granting an equal opportunity to exercise the right to candidacy at the higher levels (to be nominated for office, and to take hold of office), I noted, should not deter us from the fact that everyone, or most everyone, could have substantive equality of access to it at the lower levels (to be recognized by fellow citizens as a potential office holder, and not to be punished by declaring yourself as willing to run for office.) Substantive, and not merely formal ('in paper') equality of opportunity to the exercise of both levels, I showed, is required both by the legitimacy of the political system itself, as with other broader social justice issues.

Indeed, as I explained, one of the values upon which we ground the legitimacy of representative democracy is the protection of equality of political influence. Where there is the possibility or more substantive equality of opportunity for this influence, it should be sought. On the other hand, the equal political recognition entailed by substantive equality of access to at least the first two dimensions in which the RC can be exercised empower the citizen for effective action in other areas of social life, and as such, and approach to social justice within a representative democracy needs to account for equal opportunity of access to the exercise of the RC wherever possible. I provided as an example of a corrective strategy that could be taken the institution of party gender (or other) nomination quotas, as they have empirically provided evidence of a change of societies' perception of who can and might run for office, as well as individuals' self-perception of their ability to do so.

The final problem regarding the RC that my thesis confronted was that of legitimising political parties' role as funnels of citizens eligible for office, where their

candidate selection procedures could not be the locus of such legitimacy. I rejected the possibility of justifying political parties' preselection of candidates for office in terms of 'how democratic', or any other understanding of the fairness or justice of the procedure through which that preselection is done, given their right to freedom of association. Such a right, I argued, should be protected for political parties in terms of the role political parties play in representative democracies today which is not to be understood only in terms of their being funnels for candidates for office. Rather, their role is better understood as that of catalysers of different ideologies, preference and agendas held by private citizens and different political actors, and to select those candidates that would better represent and carry out the resulting agenda.

Such a role, as far as we can today tell, is inescapable in representative democracies of the size we have today. The best way to carry it out is by leaving political parties to their own resources as free as possible, and to allow them to adapt to the changing nature of the political realm. And yet, I claimed, a problem with the legitimacy of political parties' activity of preselecting candidates remains. The reason for this, I argued, was that amongst the roles played by political parties as catalysers of ideologies and agenda includes the crafting or deciding on a perspective on political representation their candidates would embody if they took office. This responsibility, I have claimed, falls on political parties, given the disagreement on both what the concept of political representation means, and how it should be embodied at given moments of political life. Political parties, as funnels of candidates, implicitly take a stand on such questions, but explicit cross-party deliberation on the matter is called for.

4.2 The underlying theory

In a nutshell, in this thesis I have defended: a) that other things equal, qualifying the right to candidacy for the sake of securing government quality is unjust, b) that both for reasons of political legitimacy, and of social justice, greater substantive equality of opportunity to the exercise of the Right to Candidacy must be sought, and c) that, other things equal, intra-party deliberation is a civic responsibility for political parties in face of their role as funnels of candidates for political office in the sort of representative democracies we have today. These claims are interconnected not merely by their broad thematic aspect, but also by an underlying theory of political philosophy and political life. As I have explained, I have presented shreds of such a theory as they became relevant to the defence of an aspect of each of the main arguments of each paper. I will now sketch it in a more orderly manner, and then point out how each of my claims is circumvented by it.

I understand the activity of Political Philosophy under a broadly Aristotelian framework. For Aristotle, both Ethics and Political Philosophy were the tasks of a particular sort of reasoning, one he called 'practical reasoning' (*phronesis*), in contrast to theoretical reasoning as was the realm of other philosophical enterprises such as Metaphysics. Practical reasoning is within the Aristotelian framework the exercise of reason applied to human action. The outcome of a practical syllogism, in this sense, would be a normative statement, a statement on what should be done, what action should be executed, rather than a statement of how things are for the sake of contemplation. This is the same sense in which we understand Political Philosophy as a normative discipline today. But we consider Political Philosophy not only a normative enterprise, but a theoretical enterprise as well.

So how would the Aristotelian division of knowledge, fit with our conception of Political Philosophy as a theoretical discipline? Some conceptual clarity on the matter can be brought through distinguishing 'abstract' reasoning from 'theoretical' reasoning. In the Aristotelian sense a science could not be at the same time theoretical and normative, yet both could be either abstract or 'particular'. A science, or more broadly a 'reasoning enterprise' could be both either 'theoretical and abstract', or 'practical and abstract.' What we mean today when we characterize some strands of parts of political philosophy as normative and theoretical would amount to the 'practical and abstract' in the Aristotelian landscape. But why is this distinction useful for understanding what the relationship between Political Philosophy and political practice are?

As I find it, to understand the relationship between Political Philosophy and "politics" we also need the distinction between the 'abstract' or 'general' and the 'particular,' or 'concrete'. Roughly, abstract political reasoning could be said to be the realm or level at which Political Philosophy operates. The particular, or concrete, by contrast, is the realm of politics. Only by making these distinctions can we get a grasp of the type or types of directives that Political Philosophy can provide for our politics.

We first need a further Aristotelian distinction. This is the difference between 'contingent' and 'necessary' truths, and the gradation amongst these. It can be said of a claim to be necessarily true if there are no conditions that need to be specified under which the statement is true. By contrast, a claim will be contingently true when its truth depends on whether other circumstances obtain. The contingency of statements can be understood in terms of degrees, in relation to the amount of conditions needed to make it necessary. Particular or concrete statements are always necessarily true, or necessarily false. Abstract statements, however, can be both necessary or contingent, and those which are contingent can be so to different degrees. When we make an inference from a

necessary abstract or general statement to a particular statement, we can be absolutely certain of the truth in our conclusion. However, the same certainty cannot be had when our inferences proceed from contingent truths (and the more contingency, the less our certainty).

When generating conclusions from induction, as is done in the natural and the social sciences, it is then necessary to determine what size a relevant sample needs to be such that it can be guaranteed that once a conclusion is reached it can be usefully be applied backwards. Also, the conditions of the application of those conclusions need to be spelled out as best as possible, to avoid false deductions. Statements in Political Philosophy can also be categorized into necessary or contingent. And they can also be identified as being more or less abstract or general. In the Aristotelian sense, there is no science of particulars. Science is meant to provide us with a shortcut for our understanding of the universe.[124] For it to be reliable, the appropriate level of abstraction needs to be reached. Such a level for each different issue depends on how much generality can be achieved, without compromising on necessity. In order to put such a knowledge to use, we need to be able to identify which situations constitute instances of it.

Political Philosophy, as a scientific enterprise in Aristotelian terms aims at discovering which statements about how we should live together are true, and what are the conditions which make them necessarily true. But, as I have explained, this activity constitutes an exercise in practical, rather than theoretical, reasoning in Aristotelian terms. This is to say that the conclusions from Political Philosophy are not statements aimed at our understanding of the world. They are statements aimed at directing our actions.

The role of Political Philosophy, in relation to real politics is not to provide humanity with a new cognitive process to underlie our practical reasoning. Rather, it is

[124] I am using science here in the Aristotelian sense, which includes Ethics and Political Philosophy.

an endeavor to discover and carefully delineate the conditions under which the abstractions we use to guide our political practice are true. It is then a matter for political agents to identify what instances fall under them, understanding that in many cases they will not perfectly correspond, and we will thus have to deal with contingent truths, and will have to make do with our best judgment about the matter.

4.3 Framing my conclusions within the background theory

It is within this view of the nature and purpose of Political Philosophy where I believe my project should be understood, in relation to its scope and limits. Let me briefly specify chapter by chapter how this is the case, by quickly reassembling its main claims within this broader perspective.

The first chapter concluded that, as things are today, it would be unjust to introduce qualifications for office that aimed at guaranteeing a certain quality of candidates. This claimed followed, on the one hand, from a premise that generalized certain empirical conditions across democracies today. Because of this, the thrust on the argument lies on such generalization being plausible. And, should anybody be in a position to evaluate whether political practice or action (such as a constitutional reform on RC qualifications) is to be pursued at a particular place in a particular point in time, she should be particularly careful in assessing the empirical truth of my generalized claim for the situation at hand.

Indeed, the empirical generalization upon which my conclusion was premised is that we are unable to come up with trustworthy proxies for office holding quality on the face of the changing nature of political life and needs. It is, I believe, very likely that this not only is the case now, but will always be the case given the human inability to see into the future and determine what particular features the political landscape will require of

politicians, even assuming we could confidently determine proxies or tests to reliably filter out those that possess a given trait. Yet, it is still possible to imagine a different world. Or rather, our world under different circumstances, where the composition and needs of politics became more stable, at least for a reasonable amount of time, and, as such, where we could more easily track down what made for a good politician. If this were the case, my claim on the unfairness of establishing quality-control RC qualification on the basis of their arbitrarily excluding those that might be able to hold office would not hold. Unless there was a separate reason for banning quality control qualifications, it would be wrong to ascribe a right to be voted into office to those who cannot hold it.

The central claim of the second chapter was that as things are, inequality of access to the right to run for office is both an issue of political legitimacy and an issue of social justice. After making a case for this I suggested that in some cases intra-party candidacy quotas can help alleviate or even correct this situation, as some political science studies seem to show, and, if that is the case, that it would be both a requirement of political legitimacy and of social justice that we introduce them into representative democracies of the sort we have today. The case I made for the first claim consisted in disambiguating the different stages at which the right to candidacy might be exercised. I understand that part of the paper to consist mainly on novel conceptual work. This work can, certainly, be found faulty. If that were the case, my first claim would not be warranted by the claims I have put forward. Yet, other premises might come to support it. If this happens to be the case, my second claim (regarding the use of quotas) could still prove of value, as a solution for the problem, even if this was not understood exactly under the conceptual way in which I framed it.

It might also be the case that it is my second claim in the chapter which is found wanting. If this were so, but the case for my first claim still held, then we would be pressed

to look for other solutions. The second claim is more strongly constraint by empirical circumstances than the first, as such any judgement on its application to real politics will need to asses very carefully whether the empirical assumptions and background upon which the studies on which my claim lies are applicable also to the given real situation at hand. In other words, the normative contingency of my second claim is of a greater degree than that of the first. As such, it should be approached with even more caution from a prescriptive sense.

The third chapter also defended two claims and, as within the second chapter, the second claim defended was proposed as a salutary mechanism to address the first. First, I argued that the pre-selection of candidates for office as carried out by political parties' in line with their freedom of association constitutes an issue of legitimacy within political systems understood to be representative democracies. I then claimed that open party-wide deliberation on the representative platform espoused by the party (on how representativity is understood by the party) can be a way to address such a problem, assuming 1) the resulting representative platform is made known to voters, and 2) the intraparty nominee-selection mechanisms are fine-tuned as best as possible to the achievement of it.

As different to chapter two, however, the second claim cannot be evaluated independently of the first, because what I have proposed as a solution is strictly intertwined with the theoretical framework of the problem I have presented. In terms of analyzing the applicability of the conclusions of the third chapter to real world political issues, the evaluation should be done in terms of how much is such a theoretical framework an accurate heuristic of our current political systems. It might certainly turn out to be the case that the theory is consistent within itself but does not mirror our political reality in any relevant sense. Within the chapter I have not seen it as necessary to make a case for the heuristic virtue of the theory, as I understand it to be (and present it as such)

the mainstream theory today. But mainstream certainly does not entail useful, and that is to be kept in mind when evaluating the ability of my chapter to be prescriptive of action in our political world.

After having presented the specific scope and limits of my conclusions for each chapter in relation to my understanding of the methods and tasks of political philosophy, let me now briefly detail what I see as the limits of my overall project, understood as a unit, as I have carried it out within these pages. As it can most obviously be understood, the main limitation of my project is an unavoidable consequence of what I see as its main strength. This is, of its ability to provide straightforward answers (albeit constraint by the limitations I have acknowledged in the preceding paragraphs) to tightly framed problems. I believe working in this way is particularly relevant when dealing with topics with which a field has not yet engaged with, as is the case of the Right to Candidacy, in order to provide a clear sense of the sort of issues at stake, and the type of resources we have available to sort them.

However, this way of working on a topic (in a problem-based manner) has an important disadvantage in terms of the overall quality of the work done on the topic. This is that a comprehensive understanding of the subject of study is not made possible. As I see it, providing the latter would ask for a project built more carefully from the ground up. That would allow us to clearly map the position of our object of study in relation to the universe in which is relevant. I am not sure such an enterprise can be achieved at is fullest, but even an attempt on it would require an amount of groundwork which would not be found to be of immediate relevance, and as such of interest, in relation to our understanding of the need to study a given topic.

As such, I have eschewed this second way of approaching the Right to Candidacy. This means that I have necessarily left out of my consideration topics and issues necessary

to study the problems I have outlined to their fullest. One of the main issues my work has ignored is that of what are the duties attached to holding the Right to Candidacy. In general terms, it is my understanding of the matter that a world in which no duties were tied to having such a right, we would be discussing something very different. I believe the sort of defenses we can come up with for the RC presuppose that their holders will follow certain patterns of behavior, or rather, that they *should* follow them. Consequently, I believe consideration of what those duties might be is necessary to fully understanding the matter at hand and the problems it might present. Yet, engaging in such an analysis will derail us from providing straightforward answers to the problems I have sketched in this thesis, and nobody is likely to do all.

In view of these considerations, let me close by recommending that, providing the overall case for the need of philosophical study of the Right to Candidacy that my thesis has been successful, further study is carried out in a more comprehensive manner. That most likely will not be carried out by a single researcher and will not likely be achieved to its fullest. But it is, I believe, what we should aim for if we wish to be able to provide the best understanding and guidance we can for our political life.

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