

Epistocracy and Constitutions



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Declaration

I declare and confirm that the following submission is my own work except where otherwise indicated, that it has not previously been submitted for assessment, either at Oxford or at any other institution, and that all sources have been cited appropriately.

Abbreviations

<i>CAD</i>	Constituent Assembly of India, <i>Constituent Assembly Debates</i> (Official Report), 12 Vols. (New Delhi: Government of India Press, 1946-1950)
<i>DC</i>	District of Columbia
<i>DSC</i>	Jonathan Elliot, ed. <i>The Debates in the Several State Conventions of the Adoption of the Federal Constitution</i> , 5 Vols. (Philadelphia: J. B. Lippincott, 1827)
<i>HC Deb</i>	House of Commons Debates
<i>HL Deb</i>	House of Lords Debates
<i>LOQ</i>	Legislative Office Qualifications
<i>PD</i>	Parliament of India, <i>Parliamentary Debates</i> (New Delhi: Manager of Publications, 1950)
<i>RFC</i>	Max Farrand, ed. <i>The Records of the Federal Convention of 1787</i> , 3 Vols. (New Haven: Yale University Press, 1911)
<i>USHR</i>	United States House of Representatives
<i>USS</i>	United States Senate

Table of Contents

	<i>Abstract</i>	5
	<i>Acknowledgements</i>	6
Chapter 1	<i>Introduction</i>	9
Part I		
Chapter 2	<i>Voter Qualifications: Contests over Competence in the Second Reform act</i>	32
Chapter 3	<i>Legislative Office Qualifications: The Indian Constituent Assembly and its Democratic Experiment</i>	60
Chapter 4	<i>Indirect Elections: Filtering the Competent into The United States Senate</i>	92
Part II		
Chapter 5	<i>The Case against Epistocratic Disenfranchisement</i>	119
Chapter 6	<i>The Case against Legislative Office Qualifications</i>	145
Chapter 7	<i>Indirect Elections: Filters or Futile?</i>	175
Chapter 8	<i>Conclusion</i>	194
	<i>Bibliography</i>	205

Abstract

Recently, some political commentators and academics have suggested that we should replace democracy with ‘epistocracy’, or rule by the competent. Drawing on historical case studies in Britain, India and the United States, the first part of this thesis sheds light on the use of franchise restrictions, legislative office qualifications, and indirect elections as epistocratic mechanisms concerned with competence in the legislative assembly. The second part of the thesis offers a normative critique of each of these mechanisms, demonstrating why these would be either self-defeating or simply futile from an epistemic perspective.

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1

Introduction

On 9th November 2016, I was scheduled to teach a class for undergraduate students on justifications for democracy. It so happened, without planning for this, that the class coincided with the morning on which the results of the United States presidential elections were announced. Faced with the reality of Donald Trump's election, my students seemed to have changed their minds about whether all citizens ought to have a vote. Having defended the right to vote in their essays, written some days before the American election, they had shown much more faith in democratic institutions. Now, many had changed their minds. In many ways, this was similar to the reactions found to the vote on Britain's membership of the European Union earlier that year. One set of critics claimed that a question like this ought never to have been decided through a referendum. However, much of the criticism went beyond the appropriateness of a referendum and focused instead on the 'stupidity' or 'incompetence' of voters. All around, the idea that all voters must first have to undergo some sort of competence test had become more popular than I had ever imagined.¹ The idea, however, was not an unfamiliar one. Growing up in India I had long been told that much of the problems that plagued society were a function of illiterate persons. On such accounts, illiterate voters were responsible for ensuring that politics would never move beyond identity to focus on policies instead. They also suggested that incompetent and criminal persons would be elected to legislative office as long as illiterate persons exercised a vote.² Arguments such as these in India had motivated my interest in the nexus between competence and democratic institutions. But they had, by the time I started writing this thesis, become part of public discourse elsewhere too.

¹ LZ Granderson, "Don't Let Ignorant People Vote", *CNN Opinion*, April 12, 2011, <http://edition.cnn.com/2011/OPINION/04/12/granderson.ignorant.vote/index.html>; David Harsanyi, "We Must Weed Out Ignorant Americans from the Electorate", *Washington Post*, 20 May 2016, https://www.washingtonpost.com/opinions/we-must-weed-out-ignorant-americans-from-the-electorate/2016/05/20/f66b3e18-1c7a-11e6-8c7b-6931e66333e7_story.html?utm_term=.8427e80bcde1

² The rhetorical force of such claims would be evident to those familiar with commentary on Indian politics. For an example of such claims, and a detailed prescription for the 'merit-based' selection of legislators in India, see Opendar Nath Karir, *Democracy is Demonocracy: Selectocracy is Heaven* (Noida: Sahasrara Publications, 2003).

Simultaneously, suspicions about ordinary citizens' ability to vote properly seemed to have peaked in academic discourse as well.³ Such suspicions have had a longer career in empirical political science. However, these were now being highlighted by political philosophers, who, drawing up empirical data, suggested that democracy was an unworkable ideal. If voters were as incompetent as the data suggested, then they ought to be deprived of the political power they currently possessed. Like critics outside the academy, some scholars, too, had now begun to insist that democracy ought to be replaced with an 'epistocracy' of competent persons.

In this thesis, I attempt to dispel the novelty surrounding epistocracy by suggesting that it has influenced constitution-making across space and time. Through the use of three case studies, I emphasise three mechanisms of competence-based exclusion that constitution-makers have incorporated into their respective legal frameworks: disenfranchisement, legislative office qualifications and indirect elections. I argue that debates around such mechanisms shows long-standing anxiety around ordinary citizens' capacity for political judgment, and ways in which political institutions could be designed to exclude or minimise their role. At the same time, these case studies offer the building blocks for a normative critique of such mechanisms. I highlight how the exclusionary devices I discuss also had their fair share of critics. Learning from such critics can guide us in our own normative evaluation of the three mechanisms discussed in this thesis.

1. Rule by Experts in Contemporary Democratic Theory

How the need for expertise can be incorporated into the design of political questions has long challenged political philosophers and constitution-makers. Alfred Moore rightly notes that the question of expertise might be raised at either of two levels of institutional design. At the first level, one might worry about 'master knowledge', which consists in the 'good of the community, that could be known by a specific elite'.⁴ The second dimension of expertise pertains to 'subordinate knowledges'.⁵ Experts at this level are limited in their knowledge. 'The general knows how to go to war but not whether to go to war. The rhetorician knows how to persuade an audience but not what it is good to persuade them of', Moore argues.⁶ Experts at the first level—the Guardian class in Plato's ideal regime, for instance—instruct and coordinate experts at the second level. Whereas political theorists have ordinarily

³ Jason Brennan, *Against Democracy* (Princeton, NJ: Princeton University Press, 2016); Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton, NJ: Princeton University Press, 2011); Ilya Somin, *Rational Ignorance: Why Smaller Government is Smarter* (Stanford, CA: Stanford University Press, 2013).

⁴ Alfred Moore, *Critical Elitism: Deliberation, Democracy, and the Problem of Expertise* (Cambridge: Cambridge University Press, 2017), 18.

⁵ *Ibid.*, 19.

⁶ *Ibid.*

rejected the notion of guardianship, or first-level experts, they have dedicated considerable attention to an epistemic division of labour, and the appropriate bounds of the epistemic authority of ‘subordinate’ experts. The idea of guardianship has been replaced with the norm of self-government. Rather than seeking out ‘master’ experts, who have exclusive access to the good of the community, political theorists have insisted that persons ought to be treated as the best judges of their own interests. This consensus, however, has been threatened in recent times by tumultuous political events and research in the social sciences on citizens’ levels of knowledge. This thesis revisits questions about first-order expertise, leaving open the question about the epistemic division of labour and limitations upon the scope of expertise on specific issues like climate change or international trade, which have received extensive treatment elsewhere.⁷

1.1 AN EPISTEMIC APPROACH TO CONSTITUTIONAL DESIGN

This thesis adopts an epistemic approach towards constitutional design, interrogating whether mechanisms aimed at enhancing the power of experts indeed secure their aim. For many, this approach may miss the point about constitutions. This criticism might take either of two forms: *truth-scepticism* and *proceduralism*. The first criticism suggests this approach is misguided because ‘episteme’ is not the proper language of constitutional theory; it is best left to domains like the natural sciences or medicine where it actually means something. According to the second criticism, the parameter on which the critique in this thesis takes place is misplaced. If a political arrangement transfers powers to ‘experts’, then it is wrong for other sorts of reasons: it violates the principle of self-governance underpinned by political equality. I explore both criticisms in turn.

For the truth-sceptic, talk of ‘truth’ or ‘better’ answers in politics constitutes a misguided way of speaking. Political disagreement involves conflict over irreducible values rather than facts about the world. Tracking ‘truths’ is insufficient since different weights assigned to competing values will continue to fuel disagreement. I call this the ‘category error’ objection because it sees talk of truth as inapplicable in the domain of the political. Further, there is also a pragmatic reason to avoid such discourse. Talk of truth ought to be kept out of politics because it is too dangerous. Such talk can have illiberal implications, and can be used to silence dissenters, labelling them as ‘mistaken’. Such anxieties often lie prominently behind the retreat from epistemic accounts of democracy to proceduralist ones, which I shortly explore. As Gerry

⁷ Ben Almassi, “Climate Change, Epistemic Trust, and Expert Trustworthiness,” *Ethics and The Environment* 17, no. 2 (2012): 29–49; David Budtz Pedersen, “A Dual Justification for Science-based Policy-making,” in *Expertise and Democracy*, ed. Cathrine Holst (Oslo: ARENA, Centre for European Studies, 2014), 37–48; Marion Dreyer and Ortwin Renn, “EFSA’s Involvement Policy: Moving Towards an Analytic-deliberative Process in EU Food Safety Governance?,” in *Expertise and Democracy*, ed. Cathrine Holst, 323–52.

Mackie argues '[a] strong source of the emphasis on procedural value in democratic theory is horror at the doctrines and massive atrocities of Bolshevism, Fascism, and National Socialism, the 20th century autocracies'.⁸ Following Hélène Landemore, we can refer to this as the 'anti-authoritarian' objection.

I start by addressing the 'category error' version of the truth-sceptic criticism. There are good grounds to refrain from shying away from talk of truth in politics. After all, factual questions play an important role in political disagreement. As Landemore argues:

A lot of apparent 'value pluralism' – for example the disagreement between Democrats and Republicans over the legitimate size of the government – can arguably be explained by a disagreement about facts, including complicated facts such as causal relationship between big government and efficient spending in a given social and economic context. This disagreement about the facts of the world leads to a disagreement about political principles that are dependent on those facts. At the bottom, however, both Democrats and Republicans may share a common core of basic values.⁹

In politics, then, there are often verifiable answers to questions like 'Have temperatures risen across the world since 1900?', or 'What was the rate of unemployment in 2016?'. Further, political issues also frequently involve facts relating to procedure, such as 'A constitutional amendment requires a two-thirds supermajority in each house of Parliament', or 'the Supreme Court can strike down unconstitutional laws'. Although experts and citizens might disagree on such questions, we assume that we can verify the reality of their corresponding facts by recourse to our senses. Finally, knowledge of such facts is also relevant to at least some disagreements over values. Fact-sensitive values are those which can at least be partially justified by certain facts when they are verified. For example, if it is the case that diplomacy with North Korea improves America's security, then this fact gives us grounds to support the principle that America ought to keep diplomatic channels with North Korea open. So, the category error objection is much less compelling than it might first appear.

This brings me to the anti-authoritarian version of the truth sceptic's criticism. This, too, appears overstated if addressed the right way. That is because it is possible to make truth-claims in a non-authoritarian manner. Opinions, though they might be ultimately mistaken, are tentative truths rather than arbitrary manifestations of the will. When expressed in this manner, opinions correspond to, and shape, a certain type of political behaviour that might be called 'democratic'. It consists in 'being

⁸ Gerry Mackie, "The Values of Democratic Proceduralism," *Irish Political Studies* 26, no. 4 (2011): 439–53.

⁹ Landemore, *Democratic Reason*, 216.

respectful of other people's opinions and skeptical of one's own, while stopping before the edge of full-blown relativism'.¹⁰

A second objection to the epistemic approach comes from *proceduralism*. This approach consists in denying that the value of political arrangements lies in tracking truths. Proceduralism is agnostic to the presence of political truths, and indeed, could even be compatible with accepting that there are such truths. After all, as José Luis Martí argues, many deliberative democrats, despite their outward proceduralist commitments, tacitly subscribe to the relevance of 'truth' in political discussion:

As a discursive process based on reason, deliberation assumes...both *the existence of rightness* (or impartiality, or some other equivalent) in political decisions, and *the possibility of knowing which is the right* (or impartial) decision...To argue in favour of decision A means, briefly, to show that decision A is the *right decision*, or at least, that A is *better in terms of rightness* than other decisions being compared (emphasis in original).¹¹

But proceduralists might insist that, whatever the truth-value of a democratic order, it must nevertheless be defended because of the opportunity it gives to citizens to shape collective outcomes. Underpinning this argument is the notion that democratic procedures are appropriate because they express equal respect for all persons. Any departure from such procedures would express disrespect for the judgment of some persons.¹² So, even when citizens do fail to track 'better' answers, or, indeed, arrive at 'wrong' answers, the principle of equal respect demands that we defer to them:

we value democracy . . . because it reflects the equality of citizens. We hold elections and abide by the results not because we think elections are . . . more likely than other modes of decision to get things right...Elections, or counting citizens equally, are simply the most convincing way of recognizing the equality of citizens. And we respect our fellow citizens as equals, even when they are wrong.¹³

The proceduralist approach, though, is eventually unpersuasive for at least two reasons. Firstly, if democratic procedures are merely about fairness, then why should we not, as David Estlund suggests, flip a coin to decide between two competing

¹⁰ *Ibid.*, 226.

¹¹ José Luis Martí, "The Epistemic Conception of Deliberative Democracy Defended," in *Deliberative Democracy and its Discontents*, ed. Samantha Besson and José Luis Martí (Burlington, VT: Ashgate Publishing Company, 2006), 29–30.

¹² Melissa Schwartzberg, *Counting the Many: The Origins and Limits of Supermajority Rule* (New York, NY: Cambridge University Press, 2014), 111–18. Also see Thomas Christiano, *The Rule of the Many* (Boulder, CO: Westview Press, 1996), 74.

¹³ Russell Muirhead, "The Politics of Getting It Right," *Critical Review* 26, nos. 1–2 (2014): 115–28. Also see Paula Maria Saffon and Nadia Urbinati, "Procedural Democracy, the Bulwark of Equal Liberty," *Political Theory* 41, no. 3 (2013): 441–81.

positions?¹⁴ It seems that there is something about democracy other than its fairness that contributes to our sense that it can justify coercive decisions. Secondly, it seems that the proceduralist approach assumes the principle of political equality rather than arguing for it. Democratic procedures are defended on grounds that they express respect for persons *qua* political equals. However, such an argument has little to say to those who question *why* we ought to respect political equality. Moreover, perhaps political equality should be interpreted as equal respect for persons' interests rather than their judgments. If others are better placed to understand our interests, then this might offer a case for unequal respect for persons' judgments due to equal concern for everyone's interests. Insistence on political equality alone cannot ground the justification for democratic arrangements. To defend the proceduralist position, one must supply a further argument about why equal respect for persons' interests also requires equal respect for their political judgments.

I now turn to the value of an epistemic approach towards democratic institutions. For epistemic democrats, politics is about problem-solving and addressing disagreements over questions for which there is some right or wrong answer. Further, democratic institutions are best designed to track better solutions to our collective political problems. This helps address both challenges to proceduralism outlined above. The value of democracy lies in its ability to perform epistemically better than a random procedure like coin-flips. Further, epistemic democrats attempt to provide grounds for persons' political equality rather than assuming it. Rather than taking equality for granted, they try to show why persons can be treated as equals *qua* epistemic agents with respect to political decision-making. In other words, epistemic democrats help ground political equality by underscoring its epistemic value.

Why, though, are democratic institutions grounded in political equality epistemically valuable? Epistemic democrats insist, as we shall see in Chapter 5, that each person is the best judge of her own interests. Excluding persons from the decision-making process threatens to exclude consideration of her interests, thus threatening the epistemic quality of political outcomes. Further, epistemic democrats also suggest that inclusive deliberation helps pool information widely dispersed across society, outperforming 'enclave deliberation' between experts that is inevitably myopic. Hélène Landemore has offered the most detailed version of this argument, drawing on what is known as the *Diversity Trumps Ability* (DTA) theorem, developed by Lu Hong and Scott Page. The theorem states that under certain conditions, 'random collections of intelligent problem solvers can outperform collections of the best individual problem solvers'.¹⁵ Landemore illustrates the operation of this theorem through the problem-solving that goes on in the film,

¹⁴ David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton, NJ: Princeton University Press, 2008), 6

¹⁵ Lu Hong and Scott Page, "Groups of diverse problem solvers can outperform groups of high-ability problem solvers," *Proceedings of the National Academy of Sciences of the United States* 101, no. 46: 16386.

Twelve Angry Men.¹⁶ In the movie, as individuals, all jurors except one were initially wrongly convinced about the guilt of the defendant. Even the dissenting juror would not have been able to go beyond his ambiguous intuition that the defendant's guilt had not been proven beyond reasonable doubt. But through their collective brainstorming over the available information and arguments, and by putting them through multiple filters, the group arrives at a sound verdict. The dissenting perspective of one juror triggers a discussion about the reasons each juror has for defending their guilty verdict. Through different perspectives applied to the problem, the jurors are able to bring new elements to bear upon the case, ultimately resulting in the correct answer. Landemore argues that this analogy aptly describes the circumstances of democratic politics, where deliberation is oriented to solving problems in a collective manner. Since what matters is cognitive diversity, and more inclusive deliberation is likely to enhance the diversity of a collective, this provides an epistemic argument for supporting democratic deliberation.¹⁷

Once the value of a political arrangement has been pegged to its truth-tracking abilities, there remains a risk that this might open space for rejecting democracy altogether. If, indeed, the value of any political arrangement lies in the epistemic quality of its outcomes, then why prefer democracy at all? Why not, instead, opt for an 'epistocracy' of competent elites? Against this, epistemic democrats insist that, although the value of political arrangements does lie in the quality of their outcomes, this only vindicates democratic institutions, for reasons outlined above, rather than rendering them normatively suspect.

1.2 THE EPISTOCRATIC CHALLENGE TO DEMOCRACY

In recent times, several political theorists have taken up the challenge offered by epistemic democrats. They insist that since the value of a political arrangement lies

¹⁶ Hélène Landemore, "Why the Many Are Smarter than the Few and Why It Matters," *Journal of Public Deliberation* Vol. 8, No. 1 (2012): 3. Also see Landemore, *Democratic Reason*, 98–9. Others have previously focused on the epistemic value of diversity in political deliberation without wedding themselves wholeheartedly, like Landemore, to an epistemic conception of democracy. See Iris Marion Young, "Communication and the Other," in *Democracy and Difference*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 126–28; James Bohman, "Deliberative Democracy and the Epistemic Benefits of Diversity," *Episteme* 3, no. 3 (2006): 175–91.

¹⁷ For a recent, alternative explanation for the epistemic value of diversity, and, therefore, inclusive political arrangements, see Robert Goodin and Kai Spiekermann, *An Epistemic Theory of Democracy* (Oxford: Oxford University Press, 2018). The authors appeal to a different mechanism, the Condorcet Jury Theory (CJT), to advance an epistemic case for democratic institutions. The CJT suggests, first, that a majority vote among a group of *independent*, *competent*, and *sincere* voters, each of whom is more likely right than wrong, is more likely right than individual voters separately. Further, the probability of this group's being right increases with the size of the group, approaching one as the number of voters approaches infinity. The independence condition, though, can be violated when votes are influenced by what the authors call 'common causes'; that is, when their votes are conditioned by common political leaders, ideologies or biases (*Ibid.*, 67–82). The inclusion of diverse perspectives, then, serves to counteract misleading biases or other problematic common causes.

in the quality of its outcomes, democratic institutions have little to commend them. In other words, epistocrats agree with epistemic democrats that political arrangements ought to be assessed not on any intrinsic value, but instead for their reliability in approximating correct answers. However, they part with epistemic democrats on the faith that they place in democracy's ability to do so.

In the first instance, epistocrats suggest that collective political decisions are morally weighty enough to justify some kind of restrictions on participation. John Stuart Mill, as I underscore in Chapter 2, proposed an educational qualification for the franchise, arguing that the vote was something held in public trust. As such, it must be exercised exclusively in pursuit of the common good, rather than in one's own interest. Mill argued that 'His [the voter's] vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a jurymen. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good'.¹⁸ More recently, Jason Brennan, too, has drawn upon the analogy between a voter and the jury to support his argument for epistocracy. Just as we would not permit irrational, immoral and uninformed people to serve as jurors, so too should we disallow persons with similar epistemic flaws from voting in democratic decisions.¹⁹ Such decisions, after all, share two crucial characteristics with those made by juries. They are imposed involuntarily against peoples' will even when they believe some decisions to be grossly incompetent. Further, democratic decisions, like juries, have significant consequences insofar as they can deprive citizens of property, liberty and life. Therefore, like Mill's 'public trust' argument, Brennan's analogy with the jury insists that the exercise of the vote must be regulated by normative considerations, and not be viewed as a private matter. This leads him to endorse what he calls the 'competence principle', according to which:

It is presumed to be unjust and to violate a citizen's rights to forcibly deprive them of life, liberty, or property, or significantly harm their life prospects, as a result of decisions made by an incompetent deliberative body, or as a result of decisions made in an incompetent way or in bad faith.²⁰

Further, epistocrats insist that many voters fail to satisfy the epistemic conditions which follow from the above argument. They appeal to empirical evidence that purportedly demonstrates the ignorance of ordinary citizens with respect to relevant information. In doing so, they draw upon citizens' failure to respond accurately to questions posed to them in surveys, quizzing them on their factual knowledge about political institutions, politicians and matters purportedly relevant to public policy.²¹

¹⁸ John Stuart Mill, 'Considerations on Representative Government' [1861], *Collected Works* 19: 489.

¹⁹ Brennan, *Against Democracy*, 153–54.

²⁰ *Ibid.*, 141.

²¹ Somin, *Rational Ignorance*, 17–46; Brennan, *Against Democracy*, 23–53.

Other empirical scholars draw similar conclusions about citizens' knowledge about politics. Christopher Achen and Larry Bartels, for instance, insist that the value of democracy cannot possibly lie in its epistemic capabilities because citizens lack minimal information needed to adequately shape policies.²² Their work remains silent on what value democratic procedures hold in that case. However, their empirical findings provide epistocrats with ammunition to insist that the state of citizens' ignorance vindicates the case against democratic political institutions.

A final step in the epistocratic argument lies its explanation for ignorance. Drawing upon theoretical lessons from microeconomics, contemporary epistocrats suggest that most voters are *rationally* ignorant. The acquisition of knowledge is a costly affair and has little pay-off for most voters. Because our individual political influence is so low that we can afford to remain ignorant, there is little incentive for us to acquire political information.²³ This is important insofar as it enables epistocrats to insist that the epistemic pathologies they have identified are not merely contingent ones. They are not surmountable by better designing democratic institutions, or providing education to ordinary citizens. The kind of ignorance that damages the epistemic case for democracy is a function of rational decisions, unlikely to disappear through any attempts at reform.

Based on the above considerations, some have argued that democratic decision-making has little to recommend it. The epistemic flaws of democracy suggest that we ought to arrange our basic political institutions in other ways. The first half of this thesis explores the constitutional forms that this commitment could take. Before proceeding, I wish to add that, despite the counterintuitive nature of the epistocratic perspective, there are good reasons for taking it seriously. In print, as well as scholarly forums, one often finds references to contemporary epistocrats' ideas as untenable on the grounds that they are not 'realistic'.²⁴ The underlying idea seems to be that no one would seriously consider backtracking on the commitment to democracy as the foundational principle for constitutional design: modern constitutions are the product of resistance against anti-democratic thought, which now constitute vestiges from an inaccessible past. There are good grounds for being wary of such an approach. In the first instance, it adopts too teleological a view of history, progressing in a linear fashion towards political inclusion. As Alexander Herzen insisted, and Isaiah Berlin often repeated, history has no libretto. Many institutions and ideals, once dearly cherished, were adopted only to be abandoned later. We must not let the present lead us into complacency about the future of democratic institutions.

²² Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton: Princeton University Press, 2016).

²³ *Ibid.*, 30–2.

²⁴ Josiah Ober, *Demopolis: Democracy before Liberalism in Theory and Practice* (Cambridge University Press, 2017), 179; Mark Chou, "Combating Voter Ignorance: A Vertical Model of Epistocratic Voting," *Policy Studies* 38, no. 6 (2017): 589–603,

Further, the ‘unrealistic’ nature of some normative ideal has rarely prevented political theorists from subjecting it to greater scrutiny. From an epistocrat’s perspective, it is possible that his moral theory is perfectly justifiable, but that present circumstances render it hard to implement. Normative political theory is undoubtedly no stranger to such prescriptions. From obligations relating to just distributions of wealth to the establishment of a fairer regime for refugees, we are constantly confronted with obligations that states are unwilling and unlikely to implement in the near future. However, we nevertheless insist on treating those obligations seriously, attempting to understand what they demand of us, before we start to reflect on what form they ought to take in a non-ideal world. Finally, it is worth remembering that it is not just the epistocrat whose prescriptions lean in the direction of political exclusion, manifested in mechanisms like the kind explored in this thesis. Rather, even wholehearted defenders of democracy, who rely on its epistemic credentials, find themselves vulnerable to epistocratic exclusion. Epistemic democrats are able to support democratic institutions and mechanisms in only a contingent manner. If these are, in fact, epistemically superior, then they ought to be adopted. However, they leave open the possibility that alternative mechanisms, despite being exclusionary, deserve our endorsement, if indeed they are epistemically reliable.

2. An Epistemic Approach to Constitutional Law on Parliament

The judiciary is perhaps the institution most frequently subject to epistemic scrutiny. Proponents of judicial review of the legislative process advocate what we could term as an epistocratic approach. They insist, first, that there are some outcomes that are so fundamental to the legitimacy of any political arrangement that their protection ought to be prioritised while considering the design of a polity’s institutions. The second step in their argument consists in insisting that judges, rather than elected representatives, ought to be entrusted with the realisation of such outcomes. Corey Brettschneider has argued that the judges ought to override majoritarian decisions in order to defend the ‘core values of democracy’, and the right to participate ‘when this right is more fundamental than the negative impact of a policy on the core values of democracy’.²⁵ Similarly, Eisgruber insists that ‘the institution of judicial review is a sensible way to promote non-majoritarian representative democracy’. He argues that the judiciary has often represented what is the ‘best in people’ when political institutions have ‘pandered’ to ‘people’s baser selves’.²⁶

²⁵ Corey Brettschneider, *Democratic Rights and the Substance of Self-Government*, (Princeton University Press, 2007), 152.

²⁶ Christopher L. Eisgruber, *Constitutional Self-Government* (Harvard University Press, 2001), 210.

Some defenders of judicial review insist that their ideas are compatible with, and stem from, respect for democratic principles.²⁷ This claim has been subject to a great deal of examination and it is beyond the scope of my project to explore this further. Let me note nevertheless that there are two distinctively epistocratic grounds for strong judicial review of legislation. The first argument relies, often tacitly, on disregard for citizens' ability to respect basic rights or the core values of democracy. For instance, Eisbruger claims that the judiciary's edge lies in its unelected nature, which makes it better able to respond to 'reasons rather than interests'.²⁸ He argues that as unelected actors, judges can base their decisions on the quality of reasons rather than counting heads. Why, though, is there a dichotomy between assessing the quality of reasons and the counting of heads? Do elected actors not give quality reasons when they set out to gather a larger number of heads in their favour? Eisbruger's argument relies upon suspicions that ordinary voters would fail to respond adequately to the force of reason. A second epistocratic defence of judicial review relies on the relative expertise of judges *qua* specialised bureaucrats. On this account, judges are superior epistemic agents, who provide carefully considered reasons for their decisions, rather than arriving at them in an irrational manner. Their long judicial training ensures that they possess the cognitive capacities needed for deciding upon complicated, but non-negotiable, matters of justice.²⁹

Like the judiciary, the bureaucracy, too, is frequently subject to epistemic analyses. Some scholars call for a stronger role for independent and empowered technical experts in political decision-making. They emphasise the specialisation of knowledge involved in certain domains, and insist that such knowledge is not readily available to outsiders. On this account, there exists some strictly non-evaluative knowledge for which we ought to defer to experts, rather than the judgment of ordinary citizens (or their representatives).³⁰ Other proponents of a strengthened bureaucracy insist that democratic decisions necessarily result in time-inconsistent preferences, and that an independent set of experts is able to rectify this deficiency.³¹ Thus, the design of the bureaucracy is often assessed on epistemic grounds, by reference to the quality of outcomes that it produces.

The legislature, by contrast, has received little epistemic scrutiny relative to the judiciary and the bureaucracy. If the value of a political process does indeed lie in the quality of its outcomes, then perhaps the law-making body must be designed in an epistocratic fashion. Focusing on the judiciary and the bureaucracy has offered

²⁷ Annabelle Lever, "Democracy and Judicial Review: Are They Really Incompatible?," *Perspectives on Politics* 7, no. 4 (2009): 805–22.

²⁸ Eisgruber, *Constitutional Self-Government*, 98.

²⁹ For a survey of arguments for the epistemic superiority of judges, see Maya Sen, *Courting Deliberation: An Essay on Deliberative Democracy in the American Judicial System*, *Notre Dame Journal of Law, Ethics and Public Policy* 27, no. 2 (2013): 303–31.

³⁰ Anne Jeffrey, "Limited Epistocracy and Political Inclusion," forthcoming in *Episteme*.

³¹ Gary Miller and Andrew Whitford, *Above Politics: Bureaucratic Discretion and Credible Commitment* (Cambridge University Press, 2016).

epistocrats a way to avoid this question altogether. Their energies have been dedicated to fixing constraints on what a democratic legislature can do. But perhaps their aim is better served by regulating the law-making body in the first place. After all, even under judicial review, and greater power for bureaucrats, there is likely to be considerable space left for parliament within which it can enact laws. Even when the bureaucracy enjoys greater latitude, the legislature would have *some* decision-making power. If experts are better at taking decisions, then why not ensure that even this limited power is exercised by them, rather than epistemically unreliable legislators? Further, why wait for the judiciary to strike down unsound laws? We could, instead, promote epistemically reliable outcomes by stacking parliament with experts in the first instance. Finally, the legislature is the body which decides, in the first instance, how much and what power should be ceded to other non-elected actors. Even if judges and bureaucrats are awarded significant decision-making power, legislators can often amend a constitution to withdraw or amend these powers. So, the legislature offers a significant turf on which debates over the epistemic reliability of political outcomes must be contested. Should it be designed in an epistocratic fashion, aimed at prioritising the presence of experts, or in a democratic, inclusive way? In this thesis, I hope to contribute towards better understanding of how we could address this question.

What does it mean, though, to design constitutional rules governing the legislature in an epistocratic way? The cases examined in this thesis point to three modes of exclusion aimed at ensuring that only competent persons are elected to legislative office: disenfranchisement, legislative office qualifications and indirect elections. The first of these mechanisms attempts to ensure that the power of choosing a legislator, as well as exercising influence on her actions through the electoral process, is vested only in competent persons. It does so by excluding those deemed incompetent from voting for legislators. The second mechanism attempts only to include putatively competent legislators in the legislative body. The third mechanism gives a vote to all persons, including putatively incompetent ones. However, it ‘filters’ their vote through seemingly more competent secondary electors. Indirect elections aim, as I demonstrate later, to ensure the selection of more competent legislators in this way, and ensure that they are accountable to electors with more competence than the ordinary voter.

3. The Study of Constitutional Debates over Legislative Design

This thesis contributes to our understanding of epistocratic legislative design in four ways. First, it offers a constitutional history of epistocratic mechanisms governing legislatures across space and time. Studying *debates* surrounding the formation or amendment of constitutions is particularly instructive in this respect. If one looked merely at the text of the constitution, it would not be clear why, for instance, the provision on legislative office qualifications was less inclusive than the one on adult

suffrage. Nor would an examination of the text of the second reform act tell us why the franchise was restricted only to the householder, and not granted more widely. Examining constitutional debates can demonstrate the epistocratic arguments that were used to justify these constitutional provisions. Whether or not these reasons constituted *the* basis for adopting particular mechanisms, they played an important role in shaping them. Constitution-makers might indeed have had other things on their mind when defending disenfranchisement or legislative office qualifications. They may, for instance, have really acted on the basis of some interests of theirs that these institutions would serve rather than on any normative grounds for acting one way or another. Alternatively, their decision might have been the outcome of some prejudice rather than the grounds they offered in open debates. Even if this were the case, it is significant for our purposes that several members of these constitutional assemblies drew upon epistocratic arguments to defend the mechanisms I explore. It was important to them that they justify those mechanisms in *this* way. That is all that I mean when I say that epistocratic considerations played a role in shaping actual constitutions.

One might insist that we could profitably look to the past beyond constitution-making bodies. We might find, strewn across philosophical work on political institutions, prescriptions for certain other epistocratic mechanisms. Indeed, there have been attempts of this kind, where theorists interested in epistocracy have directed their attention towards individual figures like Plato or John Stuart Mill.³² Such work has tried to shed light on their suspicions of citizens' capacity for judgment and the political institutions they consequently recommended. While these commentaries are indeed valuable, they can hide ways in which epistocracy was not restricted to the academy, or the philosopher's armchair. Rather, there were moments when it shaped the formation of constitutions. One of the aims of this project is to underscore ways in which epistocratic considerations shaped constitution-formation. This is particularly significant because of the manner in which commentators on epistocracy tend to suggest that this is a novel arrangement, and that it constitutes a departure from *status quo*. Brennan, for example, argues that much of our discomfort with epistocracy stems from the non-negotiable status we ascribe to democratic arrangements.³³ Democracy is something of a 'given' and departures from it are viewed as discomforting. I attempt to show, however, that epistocracy has a much longer history, and has influenced the practice of constitution-making across geographical and temporal borders.

³² Gerasimos Santas, "Plato's Criticism of Democracy in the Republic," *Social Philosophy and Policy* 24, no. 2 (2007): 70–89; Andrew Lister, "The Challenge of Moderate Epistocracy," Paper Presented at the IPSA World Congress of Political Science—New Directions in Democratic Theory, Montreal, July 2014.

³³ Jason Brennan, "The Right to a Competent Electorate," *The Philosophical Quarterly* 61, no. 245 (2011): 721–22.

A second contribution of these case studies lies in revealing a richer discourse around epistocracy and how it should be operationalised. In the first instance, it underscores heterogeneous conceptions of ‘competence’. As I demonstrate in Part I, constitution-makers in all cases examined there, operated with different conceptions of what competence in voting or law-making entailed. These included, among other things, responsible management of the state’s finances, ability to resist corruption, and technical knowledge of statecraft. Further, they relied on different qualities or behavioural traits to predict whether an actor or set of actors would demonstrate such competencies. Formal education, knowledge of literary or scientific fields, and responsible management of personal finances, among others, served as indicators of one’s competent use of political power. The apparent consensus on qualifications for voters and legislators, then, masked constitution-makers’ varied views on what such qualifications ought to track.

Even when constitution-makers converged on the qualities that characterised a competent voter or legislator, they struggled to find consensus on, both, appropriate tests, and thresholds for competence. In Britain, convergence over ownership of property as a mark of a voter’s fitness failed to eliminate further debates over the precise nature of the property qualification. Was the franchise to be based on the rental value of one’s home? Or was it to be based on how much the house was rated at for the purposes of taxation? What rental or rating value adequately predicted one’s fitness for the franchise? Similarly, in India, debates over qualifications for legislators converged on the idea that certain places in parliament ought to be set aside for ‘experts’ from specific fields. Which field, however, produced experts who would be an asset in the task of making laws? As members of the Assembly were to argue, why did competence in literature or arts serve as a proxy for one’s value as a legislator? Why did expertise in agriculture or labour not serve as a proxy on similar grounds? Further, did one’s competence as a legislator require merely some knowledge in fields like art and literature, or was *specialised* knowledge necessary? Once again, the study of constitution-making shows us how much of the debate really begins only *after* there has been convergence on the value of epistocracy in constitutional design.

These points iterate how, even if we accepted that epistocracy is the proper approach to constitutional design, there are further stumbling blocks ahead. Agreement on the principle of prioritising expertise in the design of political arrangements is only the starting point for a wider range of debates that contemporary epistocrats have hardly begun to consider. In Part II of the thesis, I do not push this point further, instead pursuing an alternative line of argument against epistocratic mechanisms. However, the analysis in Part I opens space for, both, further development of epistocratic thought, and an insight into subsequent challenges to which it would be vulnerable.

Indeed, some of the tests for competence proposed in our case studies seem egregious to a point where they might appear scarcely worth serious consideration. For instance, we might find little value in studying the proposal, found frequently in Britain, that ownership of property ought to serve as a proxy for one's competence as a voter. However, this approach would be too hasty. First, although the test proposed here may justifiably be viewed as misguided, it was underpinned by a serious theory of what competence in the voter comprises. As I demonstrate later, proponents of this test suggested that ownership of property indicated several positive qualities such as prudence and fiscal responsibility. Further, the presence of such tests in constitutional discourse iterates the necessary mutations that assessments for competence undergo when they are entrusted in legislative hands. Once constitution-makers are empowered to test whether or not voters or legislative actors are competent, filling in the definition of 'competence' falls to fallible assemblies, where tenuous proposals like these cannot be ruled out.

Thirdly, the case studies in this thesis reveal how constitution-makers attempted to integrate epistocratic mechanisms in wider constitutional design pertaining to the legislature. They emphasise how such mechanisms interacted with other constitutional devices. Constitutional mechanisms aimed at selecting competent voters or legislators were placed alongside other epistocratic mechanisms, but also alongside constitutional provisions with a more inclusive thrust. Epistocracy, when removed from the philosopher's armchair, was not a 'pristine' form of government. Rather, it became one piece in the wider puzzle of constitutional design. In India, legislative office qualifications were deemed permissible—and, indeed, necessary—precisely because suffrage was distributed equitably among all adults. As I demonstrate in Chapter 3, this marked a contrast with the American case, where restrictions on office were strictly regulated and minimised, although the vote could be restricted to those deemed competent. Similarly, the use of indirect elections in America and India demonstrated competing commitments to popular and expert political judgment. Such elections were embedded in a bicameral legislature, where one chamber would be chosen through direct elections, and the other through indirect ones. The directly elected chamber would allow the law-making body better access to, and control from, ordinary citizens, whereas the indirectly elected one was aimed at enhancing the power of a more competent class of law-makers.

Fourthly, the case studies examined here offer us resources to develop our own normative case against epistocratic constitutional mechanisms. As forums characterised by considerable contestation and debate, the constitution-making bodies studied here alert us to arguments against mechanisms that they ultimately adopted. As I demonstrate in Part II of this thesis, such dissent can serve as a valuable resource for guiding our evaluation of epistocracy, and strengthen existing criticisms against it in normative democratic theory.

But why restrict ourselves to critical perspectives within constitution-making bodies if we then wish to obtain materials for a normative critique of epistocracy? Why not, as I mentioned earlier, cast a wider net aimed at mining resources from other critics from the periods explored in this thesis? One could also cast an even wider net and learn from historical figures outside the periods explored here. Some political theorists have, for instance, wisely attempted to draw upon figures like Aristotle and John Dewey to help build an epistemic case for democracy.³⁴ Undoubtedly, a broader inquiry that looked towards a range of philosophers would be productive, and strengthen our ability to build a case against the three epistocratic mechanisms I explore. But one should not underestimate the ability of constitution-makers help us in this task. The constitution-making bodies explored here are interesting, in part, because they consisted in men (in the Indian case, some women) of great intellectual calibre. From James Wilson, to John Stuart Mill and, finally Bhimrao Ramji Ambedkar, they were composed of prominent figures who remain noteworthy for their astuteness on constitutional and political affairs.

Examining the dissent over epistocratic mechanisms can also help reveal the contingent nature of the eventual constitutional text. It is tempting to view constitutional provisions, such as epistocratic ones, as natural products of their temporal and cultural context. One might be tempted to believe that given the cluster of normative beliefs that constrained constitution-makers, the mechanisms they adopted were inevitable. This only serves to strengthen what I called the teleological view of history. Viewing historical constitutional ideas in this way seems to affirm the view that certain mechanisms were inevitable in *that* time but are impossible in the present. A study of the constitutional debates can alert us to dissenters, the alternatives they presented, and, therefore, the contingency of the outcomes in each case.

While the decision to limit our inquiry to constitution-making bodies is partly driven by practical considerations, it secures one aim of the project successfully while not harming the other. It offers, on the one hand, adequate resources to critically assess epistocracy. On the other hand, it underscores, both, ways in which proponents of this approach actually influenced constitutional design, and how this outcome was a contingent one, given the presence of dissent in the constitution-making assembly.

In sum, the study of constitution-making bodies in this thesis alerts us to the impact of epistocratic thought on legislative design and three ways in which it was operationalised. Further, it highlights the heterogeneity of views subsumed under the notion of epistocracy, revealing difference in conceptions of ‘competence’, ways of assessing such competence, and thresholds of fitness advanced by its proponents.

³⁴ Josiah Ober, “Democracy’s Wisdom: An Aristotelian Middle Way for Collective Judgment,” *American Political Science Review* 107, no. 1 (February 2013): 104–22; Matthew Festenstein, “Does Dewey Have an ‘Epistemic Argument’ for Democracy?,” forthcoming in *Contemporary Pragmatism*.

This study also demonstrates ways in which constitution-makers sought to situate epistocratic mechanisms with other constitutional devices, aimed at securing similar ends but also balance them against provisions with more inclusive aims. Finally, the study of dissent in such bodies offers us the resources to develop our own critique of epistocratic constitutional mechanisms.

4. Three Constitutional Moments: United States, Britain and India

Part I of this thesis emphasises the incorporation of epistocratic mechanisms in three different constitutional moments: debates over the American constitution drafted in Philadelphia, the second reform act debates in Britain, and deliberations of the Indian Constituent Assembly. Comparative projects like mine raise the obvious problem of case selection. Why focus on these three cases rather than others? The primary reason for doing so is that each of these three constitution-making bodies helps shed light on a distinctive epistocratic mechanism: disenfranchisement in Britain, legislative office qualifications in India, and indirect election in the United States. I emphasise how, despite having taken place in three different centuries, these constitutional events shared a common concern with questions of expertise and institutional design. Indeed, a study of other constitutional events could offer a more expansive list of epistocratic devices. My analysis does not in any way aim to cover all possible epistocratic mechanisms in the constitution maker's tool-kit. Rather, it allows us to focus on three such mechanisms, which can be defended independently of each other. As I later demonstrate, one could make the case for legislative office qualifications even if one rejected epistocratic disenfranchisement. Further, one could defend the value of indirect elections despite conceding certain arguments against both other mechanisms. Each mechanism, therefore, has distinctive features that require normative scrutiny. Further, the three constitutional moments examined here are related in important ways. Although spatially and temporally different, they did not exist in isolation from one another. Rather, as I show during the course of this thesis, decisions adopted in one case influenced those taken in another. Constitution-making in America was informed by, and later, influenced, debates over institutional design in Britain. Constitutional mechanisms drawn from America (indirect elections to the second legislative chamber) and Britain (graduate constituencies) were incorporated by framers of the Indian Constitution. Even after such mechanisms were removed in America and Britain, they left their mark in India.

Apart from contributing to theoretical debates over democracy, this thesis also seeks to further our understanding of the three constitutional moments it explores. It does so by avoiding the problems of *trivialisation*, *idealisation* and *neglect* attached to the current study of these cases. Firstly, my study helps our understanding of the second reform act in Britain by avoiding the *trivialisation* of arguments offered in

parliament, and focusing on the normative space of reasons within which it was produced. Jon Elster argues that ‘reason’ and ‘interest’ are among the predominant forces ordinarily at play in the making of constitutions. Reason refers to ‘any impartial motivation, disinterested as well as dispassionate, typically based on a conception of justice or fairness’. By contrast, ‘interest’ involves ‘the pursuit of individual, group or institutional advantage’.³⁵ It can be tempting to view constitution-making as a purely self-seeking process, where decisions are products of rational calculations aimed at preserving their interests. As I later demonstrate, much of the scholarship on the second reform act in Britain seems to adopt such an approach. On such accounts, the debates over this act were driven largely by the pursuit of electoral advantage, with different players advancing versions of the law that could best satisfy their political interests. Much of the scholarship, however, trivialises the exchange of reasons, glossing over the substantive argumentative exchanges during the making of the law. I attempt to correct for this by taking seriously constitution-makers’ commitment to the idea that some people are better epistemic agents than others in the political domain. Bracketing for the purpose of this study, sectional interests they sought to advance, I try to understand how they justified the exclusion of incompetent persons, and the different modes of disenfranchisement their argument entailed.

Whereas the fault in commentaries on the second reform act lies in not focusing adequately on reasons offered in the constitutional debate, scholarship in the Indian Constituent Assembly suffers from its narrow attention to a narrow set of arguments. Different readings of the Assembly’s proceedings converge in their *idealisation* of its figures qua founding figures with respect to their commitment to democratic principles. For instance, a common narrative surrounding the inauguration of the Indian constitution suggests that its founding figures abandoned colonial distrust of peoples’ capacity for self-rule. Instead, they broke radically with that anti-democratic tradition, authoring a democratic constitution that affirmed faith in the people. As I argue later in the thesis, this fails to take seriously the multiple ways in which epistocratic arguments continued to influence the new constitution.

Finally, this thesis also highlights a hitherto *neglected* feature of the American constitution-making process. It is intriguing that there is little or no commentary on the considerations that led to the adoption of indirect elections to the Senate by the Philadelphia Convention (also known as the Federal Convention). It is possible that this neglect stems from the elimination of this mechanism following the Seventeenth Amendment to the Constitution. However, as I argue in the thesis, this subject continues to warrant investigation not in the least because it influenced the design of legislatures, such as India’s, long after it was dropped from the American Constitution.

³⁵ Jon Elster, “Reason, Interest and Passion in the East European Transitions,” *Social Science Information* 38, no. 4 (1999), 500–01.

5. Notes on Method and Chapter Outline

5.1 COMMENTS ON METHOD: PART I

Part I of this thesis navigates through three constitutional moments, demonstrating how actors in each case aimed at institutionalising a particular epistocratic mechanism, aimed at enhancing the quality of political outcomes by excluding the influence of popular judgment. The chapter on the second reform act focuses largely on parliamentary debates recorded in *Hansard*. I examined debates over, both, Benjamin Disraeli's bill, which was eventually enacted, and an abortive bill proposed by Russell and William Gladstone in the same parliament the previous year. In the Indian case, I relied on the records of the Indian Constituent Assembly, both, its plenary debates and proceedings of its various sub-committees. These constitute by far the most extensive archive explored in this thesis. The plenary debates span twelve volumes, whereas the committee debates have been published in a five-volume supplement. I carried out an initial reading of these documents, identifying areas of interest and constitutional provisions that raised questions relevant to this thesis. I then scrutinised these in greater detail in my subsequent readings. My study of the American constitutional debates looks at, both, the Philadelphia Convention, where the constitution was drafted, and the state constitutional conventions where it was ratified. The latter debates are recorded in a more extensive form since the Philadelphia Convention itself took place behind closed doors. I read Madison's notes on the Philadelphia Convention closely, marking constitutional provisions that were most relevant for this thesis. I then looked at debates over these specific provisions during the state conventions.

Part I draws upon a variety of methods. First, it looks closely at the text of a particular constitutional provision in an attempt to understand the salience of particular words, and why these are significant. In some cases, although the text of a constitutional provision, by itself, says little, it is helpful to compare it with, firstly, other constitutional provisions that were incorporated and secondly, competing proposals for that provision that were ultimately rejected. This method is particularly helpful in the American case where much of the archive offers only short-hand commentary on the Philadelphia Convention drawn from James Madison's notes. Second, I also look closely at the reasons offered for or against some constitutional provision by members of the constitution-making body. In doing so, I read these against other interlocutors, who criticised or supported such arguments. This, again, helps us understand the broader context within which such arguments were located, helping zoom in on the finer points of clash between political actors involved in the debate over the constitution. This method is particularly helpful for the second reform act debates, where the text of proposed amendments is not always available in the archive. Finally, in some limited cases, I attempt to better understand the turf

of a specific debate by supplementing my analysis of constitution-making bodies with commentaries offered by individual figures outside such assemblies.

5.2 COMMENTS ON METHOD: PART II

In *The Rhetoric of Reaction*, Albert Hirschman examines three successive periods of social change—the aftermath of the French Revolution, the move towards democratisation and universal suffrage in the nineteenth century, and the welfare state in our present times—and finds that opposition to these draw on three different argumentative strategies.³⁶ He calls these the *jeopardy*, *perversity* and *futility* theses. The jeopardy thesis suggests that a certain action may well improve the situation it attempts to remedy but impose unacceptable costs, by undermining other cherished ideals. The perversity thesis suggests that a certain attempt at improvement would only exacerbate the condition one wishes to remedy. Finally, the futility thesis suggests that a particular transformative attempt improvement would fail to achieve its purpose; that it would make no dent in status quo.

The normative strategy for this thesis comprises examining, and later, extending various perversity and futility arguments offered against epistocratic mechanisms in the three constitutional case studies that I explore. I deliberately set aside an analysis of jeopardy arguments, instead focusing on perversity and futility arguments because they enable us to engage with epistocracy on its own terms. Jeopardy arguments can succeed only if one can demonstrate that, despite fulfilling its stated purpose, given transformative attempts are unjustifiable because they undermine other valuable normative ideals. This, however, requires us to demonstrate to our interlocutors that those other ideals are in fact valuable; that their being undermined is sufficient reason to eschew the pursuit of the value they seek to, and perhaps successfully, secure. For instance, in responding to epistocratic proposals, jeopardy arguments can take the form of suggesting that competence-based exclusion violate moral principles like self-determination or intrinsic respect for persons' equality. However, these jeopardy arguments from the proceduralist must first demonstrate that the values which guide them have priority over the epistocrat's. In other words, they must tell us why the normative parameter on which epistocrats assess competing proposals for constitutional design—the epistemic quality of political outcomes—is less important compared to the values they hold dear. Against this, perversity and futility arguments do not dispute the particular value that a given transformative attempt pursues. Rather, it aims at how that value stands undermined or unachieved by a given transformative attempt. Thus, it allows us to show how certain epistocratic mechanisms are self-defeating or inadequate even on their own terms.

In the second part of the thesis, I bring into sharper focus perversity and futility arguments against each of the mechanisms offered by critics in Britain, the United States and India. I situate these in contemporary debates over democratic theory,

³⁶ Albert O. Hirschman, *The Rhetoric of Reaction* (Harvard University Press, 1991).

examine potential objections that might be mounted against them, and responses we could offer to overcome those objections.

5.3 CHAPTER OUTLINE

Part I of the thesis examines the three constitutional debates mentioned above. In Chapter 2, I examine 1866-67 legislative debates over the second reform act in Britain. I explore how it viewed disenfranchisement of voters as a mechanism for restricting the political power of those deemed incompetent. This chapter also discusses ways in which constitution-makers sought to distinguish between competent and incompetent political actors. In particular, it looks at contestations over the use of educational qualification as a way of disenfranchising unfit persons. Finally, it examines different arguments that proponents of reforms drew upon to emphasise the benefits of enfranchisement. In Chapter 3, I look at debates of the Indian Constituent Assembly, and its members' persistent anxiety about the incompetence of ordinary voters. I demonstrate how, despite its adoption of adult suffrage, the assembly was much less inclusive in its approach to legislative office. I argue that it explicitly limited membership of the legislature in some ways, while leaving space for legislative actors to do so in the future. Chapter 4 turns to debates leading up to the adoption of the American Constitution. It explores the use of indirect election to the Senate as a way of filtering the judgment of voters, and ensuring that only the most competent legislators would be chosen. This chapter attempts to explain why, according to American constitution-makers, indirect elections would work as a 'filter' of this sort. I argue that such elections offered them the ability to convert legislative office qualifications for state legislators into a form of restricted suffrage in elections for senators. At the same time, this chapter also highlights other, less exclusive dimensions involved in the design of the Senate. It demonstrates how the founding figures of the American constitution desired a second legislative chamber for its ability to offer a second opinion on bills, and to mitigate deficiencies attached to institutional features of the first chamber.

Part II of this thesis then turns to a normative critique of the three mechanisms highlighted in the previous part. Chapter 5 examines contemporary arguments for disenfranchisement of incompetent persons. It helps strengthen these in three ways: first, by shedding their reliance on the notion that each person is the best judge of her own interests; second, by emphasising the distinctive epistemic obstacles to which socially advantaged groups are suspect; and third, by emphasising the devaluation of status entailed by competence-based disenfranchisement, and its implication for one's standing in political deliberation. Together, these arguments attempt to strengthen the perversity argument against epistocratic disenfranchisement, which suggest that competence-based exclusion from the suffrage would likely be epistemically self-defeating. Chapter 6 develops a similar argument against competence-based exclusion from legislative office. It demonstrates, first, why an

epistocrat might find such exclusion appealing. Next, it highlights why arguments against epistocratic disenfranchisement may not transfer neatly to the case against epistocratic legislative office qualifications. It argues, however, that competence-based restrictions on legislative office can nevertheless be rejected on the grounds that they would be epistemically self-defeating. Finally, Chapter 7 turns to indirect elections, and demonstrates why they are likely to be epistemically futile. I argue that the epistocrat's case for indirect elections leans on two assumptions: first, that voters' choice of intermediary electors is epistemically reliable compared to their substantive preferences about policies and (ii) indirectly elected legislators can be untethered from the substantive preferences of ordinary voters. I argue that neither assumption is plausible, rendering indirect elections a futile exercise.

Part I Constitutional Mechanisms of Epistocracy: Three Case Studies

The case studies presented in Part I do not proceed in a chronological order. Instead, I start with an analysis of the British second reform act debates (1866-67), followed by the Indian Constituent Assembly (1946-50) and finally examine the inaugural debates over the American Constitution (1787). Each of these case studies is aimed at emphasising three separate epistocratic mechanisms. The order in which these are studied allows us to move from the sharpest mode of exclusion, namely disenfranchisement, to the more inclusive one offered by indirect elections. In cases of disenfranchisement, those excluded are precluded from exercising any vote at all in the selection of decision-makers. On the other hand, indirect elections allow everyone to vote, but mediate the selection of decision-makers through a secondary electorate. In between these two mechanisms lie legislative office qualifications, instantiated by the Indian Constitution. These allow everyone a vote but restrict office-holding to those who satisfy certain competence-based restrictions. As such, they are more inclusive than jurisdictions that disqualify incompetent persons from voting, but less inclusive than indirect elections which do not prescribe any qualifications for those who can hold office.

2

Voter Qualifications: Debating Competence in the Second Reform Act

The first case study in this thesis explores the use of disenfranchisement as a mechanism for restricting the political power of those deemed incompetent. Here, I examine the 1866-67 legislative debates over the second reform act in Britain.¹ This chapter aims, first, to highlight how debate over the act was underpinned by concerns over the competence of prospective voters. Further, it investigates various conceptions, tests, and thresholds of competence that were offered by different participants. Finally, this chapter also outlines the case for expansion of the suffrage made during the debates over the Act. Section I begins by providing an overview of historical circumstances of the second reform act, and ways in which previous scholarship on this event has overlooked the salience of legislative debates. The second section examines arguments offered, both, for and against the expansion of suffrage to the working classes. I suggest that these arguments drew on competing understandings of how competent voters ought to be distinguished from incompetent ones. I demonstrate how legislators drew on different proxies and preconditions which they suggested were relevant in assessing competence. These were further underpinned by varying qualities that were advanced as identifying ‘competence’ in a prospective voter. Section 3 furthers this account by emphasising the appeal of education, evidenced either through literacy tests, or the possession of a university degree, in identifying competent voters. Finally, Section 4 outlines arguments offered by proponents of suffrage reform for the value of enfranchising workers.

1. Background to the Second Reform Act

In August 1867, Britain experienced what Robert Saunders calls a ‘quiet revolution’.² The Tories, led by Lord Derby and Benjamin Disraeli, succeeded in getting the second reform act through parliament. This success was significant because no fewer than seven governments had tried to undertake reform in the previous fifteen years; two had even fallen as a result of their attempt. The most recent attempt had been

¹ All references to the ‘reform debates’ in this chapter are to deliberations over the second reform act.

² Robert Saunders, *Democracy and the Vote in British Politics, 1848-1867: The Making of the Second Reform act* (London: Routledge, 2016), 1.

undertaken by the Liberal government under Lord Russell and William Gladstone in 1866. The bill failed on its second reading, leading to the government's resignation. The Tories, who formed the new government, had opposed reform bills in 1852, 1854, 1860 and 1866. Yet, under Disraeli, it was the Conservatives who introduced what ultimately became the second reform act. In doing so, they settled, at least temporarily, a critical constitutional question that had been the subject of intense debate for the last several years.

Current scholarship on this subject is dominated mainly by two approaches. The first, prominent for a century after the Act, emphasises the role of extra-parliamentary features like public agitation, encouraged by figures like William Gladstone and John Bright, in the enactment of suffrage reform.³ George Trevelyan, for example, views the bill as a 'heroic tale of popular power in which Bright dictated terms to the Conservative ministers'.⁴ Frances Gillespie argues that the act passed because neither Liberals nor Tories had the courage to withstand it 'especially with the agitation out of doors in full swing'.⁵ Similarly, Royden Harrison argues that the Reform League imposed its will on the Government, comparing the Hyde Park riots of 1866 to the July Days of Paris in 1830.⁶ The second strand of scholarship views the second reform act as an outcome of party competition. Francis Smith claims that critical to the passage of the Act was Disraeli's determination that he, rather than Gladstone, ought to be credited with the success of reform.⁷ Disraeli was willing to amend the bill in any way to ensure its success and obtain the largest number of votes. Maurice Cowling, on the other hand, insists that the key to understanding the bill's fate in parliament lay in viewing men like Gladstone and Disraeli as party leaders who operated within the constraints and conditions placed by their respective positions in parliament.⁸

Neither approach pays close attention to the legislative deliberations at Westminster. As Saunders argues, these are viewed mostly as immaterial in existing scholarship on the subject.⁹ In failing to pay adequate attention to the debates, scholarship on the Act also fails to examine ways in which notions of 'fitness' for suffrage were configured, contested and incorporated into the final legislation.

³ See *Ibid.*, 13-22 for an overview of this scholarship.

⁴ George Macaulay Trevelyan, *The Life of John Bright* (London: Constable, 1925), 3, 362, 373, quoted in Saunders, *Democracy and the Vote*, 14.

⁵ Frances Gillespie, *Labour and Politics in England, 1850-1867* (North Carolina: Duke University Press, 1927), 287.

⁶ Royden Harrison, "The 10 April of Spencer Walpole: The Problem of Revolution in Relation to Reform, 1865-1867," *International Review of Social History* 7, no. 3 (1962): 351-99.

⁷ Francis Barrymore Smith, *The Making of the Second Reform Bill* (Cambridge: Cambridge University Press, 1966).

⁸ Maurice Cowling, *1867 Disraeli, Gladstone and Revolution: The Passing of the Second Reform Bill* (Cambridge: Cambridge University Press, 1967), 2-3, 311-12, 340. Cited in Saunders, *Democracy and the Vote*, 17.

⁹ Robert Saunders, "The Politics of Reform and the Making of the Second Reform act, 1848-1867," *The Historical Journal* 50, no. 3 (2007): 572.

Contrary to these approaches, this chapter takes arguments made during the second reform act debates seriously. In doing so, it emphasises how even partisan, putatively self-seeking acts like the exclusion of persons from the franchise were contested on the turf of what constituted political competence, and how this could be assessed. It highlights, that is, the epistocratic dimension of disenfranchisement in the legislative debates.

2. Property and the Assessment of Competence

Much of reform debates entailed contestation over workers' competence as prospective voters. The turf on which such contestation took place was underpinned by a specific view on the franchise, whereby one could not hold the vote as a matter of right. For if that were the case, then the suffrage would have to be extended 'not only to all householders, but to criminals, and paupers, and women, and children', Robert Montagu (member for Huntingdonshire) argued.¹⁰ The franchise was held in 'public trust' and ought to be granted only when its exercise would benefit the wider political community.¹¹ Conversely, suffrage ought to be withheld from persons if there were some reason to believe that once enfranchised, they would use their power merely to advance their own interests to the detriment of the common good. Even those legislators who argued for the expansion of suffrage did little to disturb this assumption. Instead, they attempted to argue that, contrary to the anxieties of critics, workers would, in fact, use political power in ways consistent with its nature as a public trust.

Debates over the enfranchisement of workers highlighted different proxies and preconditions of competence, over which, both, proponents and critics of an expanded suffrage rested their case. An activity or state *X* is assumed to be a *precondition* for another activity *Y*, when the performance or possession of the former is viewed as necessary for the performance of the latter. For instance, one might hold that being able to perform simple mathematical operations is a precondition for programming software. An activity *X* stands as a *proxy* for another activity *Y*, when performance of the former is taken as an indication for competence in the latter. In a selection process for a detective, I might be asked to perform a series of timed mental tasks, success on which is taken as a proxy for the presence of mind suitable for solving crimes. However, I might be able to solve crimes with great presence of mind despite failing on the mental tasks involved in the recruitment process. There is no necessary connection between one's ability to perform both tasks. That is, proxy skills are often subject to sceptical criticism, as irrelevant to the skill being assessed.

¹⁰ *HC Deb* 13 April 1866 vol. 182 col. 1293.

¹¹ *HC Deb* 12 April 1866, vol. 182, col. 1186 (Thomas Horsfall/Member for Liverpoole); *HC Deb* 19 April 1866, vol. 182, col. 1667 (Francis Charteris).

2.1 PROPERTY AS A PRECONDITION AND PROXY FOR COMPETENCE

For some legislators, a certain degree of wealth was a *precondition* for exercising one's vote properly and not wasting it away through corruption. Workers' absence of virtue was explained as a function of the temptations to which they were subject because of their *economic condition*, rather than any deficiency in their nature. Robert Gascoyne-Cecil (member for Stamford), for instance, argued that:

the vices of the poor have, unfortunately, a special bearing on their fitness for the exercise of political rights. The poor are liable more than the rich to be tempted if you place in their hands anything that is pecuniarily convertible. A great deal of odium has been cast on some Members of this House because they have stated that the working classes are more venal than the rich. That is not true as to their nature, but it is true as to the temptations to which they are exposed.¹²

To highlight their susceptibility to corruption, legislators cited reports of electoral committees that complained of the use of bribes to buy votes in areas dominated by the working classes.¹³

Despite their popularity, such arguments linking income with virtuous electoral behaviour, did not go uncontested. Austen Layard (member for Southwark) argued that if bribes were a barrier to the proper exercise of the vote, then electoral reform ought to prevent bribes rather than excluding persons susceptible to them from voting.¹⁴ This could be done through state funding for elections and the prohibition of unnecessary expenses. Further, the corruption of voters ought to be made a punishable offence. It was unfair to penalise working men for their unfitness to exercise the franchise while not penalising the corrupters.¹⁵ But Parliament had done little to arrest corruption by enacting measures like these. If anything, Layard argued, many legislators had benefited from electoral corruption. As a result, they should not appeal to the susceptibility of the working classes to bribes. Such arguments, therefore, denied that there was a nexus between persons' class and their ability to resist corruption. Wealth was not a precondition for non-corrupt voting since the latter could be eliminated through means like criminal sanctions and electoral reform.

¹² *HC Deb* 27 April 1866, vol. 183, col. 10 (Robert Gascoyne-Cecil/member for Stamford). Also see *ibid.*, col. 47 (Albert Grant/Member for Kidderminster); *HC Deb* 26 April 1866, vol. 182, col. 2154 (Charles Schreiber/Member for Cheltenham); *HC Deb* 15 July 1867, vol. 188, col. 1543 (Robert Lowe); *HL Deb* 23 July 1867, vol. 188, col. 1931 (Anthony Ashley-Cooper).

¹³ *HC Deb* 12 April 1866, vol. 182, col. 1191 (Jonathan Pim/Member for Dublin); *HC Deb* 13 April 1866, vol. 182, col. 1269 (Henry Liddell/Member for Northumberland Southern); *HC Deb* 13 April 1866, vol. 182, col. 1288–89 (Robert Montagu/Member for Huntingdonshire); *HC Deb* 16 April 1866, vol. 182, col. 1380 (Ulick de Burgh/Member for County Galway); *HC Deb* 27 April 1866, vol. 183, col. 9–10 (Robert Gascoyne-Cecil). For other statements connecting workers with corruption, see *HC Deb* 13 March 1866, vol. 182, col. 148–49 (Robert Lowe/Member for Calne); *HC Deb* 26 April 1866, vol. 182, col. 2107 (Robert Lowe).

¹⁴ *HC Deb* 16 April 1866, vol. 182, col. 1448.

¹⁵ *Ibid.*, col. 1449.

While proponents of an expanded suffrage drew the line in different ways, they insisted that at least a certain subsection of the working class was, due to its wealth, adequately equipped to offer an independent judgment on issues that most affected them. In fact, several such workers were now not only liberated from dependency on others; rather, they had assumed the role of benefactors of the destitute. They engaged in charitable activities towards the poor through ‘organised and regular saving from individual incomes’.¹⁶ In doing so, despite the hardship this implied for them, workers had shown more self-denial than the wealthier classes.¹⁷ This was a useful argument in countering the suggestion that workers, due to their economic condition, lacked the precondition for virtuous behaviour.

So far, I have examined debates over the use of property as a precondition for the proper exercise of one’s vote. For many, the possession of property played a different role, serving as a *proxy* for political competence. To see what qualities the ownership of property was taken to signal, it is worth noting concerns expressed by critics of reform against the greater expansion of suffrage. First, such critics insist that they could not trust workers’ *understanding of political economy*. On this account, the problem lay with their complete ignorance of economic issues, and the kind of policies that were good for the country. Were workers granted suffrage, they would tilt the country towards outcomes such as the abolition of free trade, primogeniture, and the freedom of bequest, and an escalation in redistribution of land, and protections for labour.¹⁸ Robert Lowe (member for Calne), for instance, characterised workers’ ignorance in the following manner:

They know nothing of the laws that regulate the distribution of wealth. They attribute to society the inequalities of society. Unless they are absolute angels, they will suppose that they are being treated with great harshness and great cruelty. What man will speak acceptably to them except the man who promises somehow or other to re-distribute the good things of this world more equally, so that the poor will get more, and the rich and powerful will get less?¹⁹

Closely related to the above concern was the suggestion that workers were not just economically ignorant, but also particularly susceptible to *impulsiveness*. Their impulsiveness in turn made them an easy prey for demagogues. Arguments of this kind relied on the assumption that voters lacked rationality and were incapable of

¹⁶ *Ibid.*, col. 1447.

¹⁷ Also see *HC Deb* 19 April 1866, vol. 182, col. 1658 (William Graham/Member for Glasgow); *Ibid.*, col. 1706 (Thomas Hughes/Member for Lambeth).

¹⁸ *HC Deb* 20 May 1867, vol. 187, col. 812–13 (Beresford Hope/Member for Stoke-upon-Trent). Proponents of such arguments, then, took for granted that certain political *outcomes* pertaining to the country’s economic framework were the mark of one’s appropriate exercise of the franchise. Working backwards, they sought to explain why, those who were unlikely to vote for such outcomes would be led to do so because they lacked relevant competencies, such as rationality or insight into economic affairs.

¹⁹ *HC Deb* 20 May 1867, vol. 187, col. 189; Also see *HL Deb* 23 July 1867 vol. 188 col. 1927–28 (Anthony Ashley-Cooper/Earl of Shaftesbury).

adequate reflection on critical political issues. As Samuel Laing (member for Wick Burghs) argued:

it was not their moral qualities that he was afraid of, for he believed them to be sound in heart and generous in their impulses; but what he was afraid of was, that if great political power were thrown into their hands, their *impulsiveness* might lead them to act without due reflection.²⁰ (emphasis mine)

Such fickleness rendered the country vulnerable to needless warfare, spurred by imprudent voters. This was particularly important because Britain, unlike America, entrusted its foreign and financial affairs to a representative chamber. It did not leave them in the hands of an upper chamber, insulated from the electorate's judgment, and capable of overlooking the frenzied judgment of a popularly elected assembly.²¹ By convention, the House of Lords did not block financial measures enacted by the House of Commons. Nor did it possess supervisory control over foreign policies like the United States Senate. Had there existed in Britain an empowered second chamber, comprised of competent legislators untethered from ordinary voters, debates over who possessed the franchise would have been far less significant.

Proponents of an expanded suffrage insisted, in the first instance, that it was unfair to portray all workers as impulsive. It was workers rather than the country's aristocratic class, that had shown considerable restraint in their support for Britain's neutrality during the civil war in America. They had done so, as Layard highlighted, under considerable hardship, even as the cotton famine drove them out of work.²² In any case, property qualifications mitigated concerns about extending the suffrage to a population marked by impulsiveness. These restrictions served as a proxy for prudence and firmness of character, trusting only those workers with the vote who had demonstrated such qualities in the conduct of their personal affairs. Proponents of an expanded suffrage pointed, for instance, to workers' record of saving money for saving banks and post office accounts.²³ Such behaviour was taken as proof of financial responsibility among a certain class of workers, and indication for how they would handle the affairs of the exchequer.

Similarly, the property qualification also served to distinguish those who understood how finances worked from those who lacked such understanding. Layard argued that the workers who satisfied the householder suffrage held 'sound opinions on the most important questions of political economy'.²⁴ They 'know as well as we do

²⁰ *HC Deb* 13 April 1866, vol. 182, col. 1319 (Samuel Laing). Also see *HC Deb* 19 April 1866, vol. 182, col. 1688–89 (Beresford Hope); *HC Deb* 26 April 1866, vol. 182, col. 2105 (Robert Lowe).

²¹ *HC Deb* 13 April 1866, vol. 182, col. 1249 (Edward Bulwer/Member for Hertfordshire)

²² *HC Deb* 16 April 1866, vol. 182, col. 1443 (Austen Layard).

²³ *Ibid.*, 1447 (Austen Layard); *HC Deb* 12 April 1866 vol. 182, col. 1133 (William Gladstone); *HC Deb* 27 April 1866 vol. 183 col. 58 (Edward Baines/Member for Leeds)

²⁴ *HC Deb* 16 April 1866, vol. 182, col 1445–46 (Austen Layard).

how sensitive credit is, how the funds rise and fall, how misgovernment, how any interruption to the public peace can lower the value of all property’.²⁵

In conclusion, although several legislators in reform debates converged on the idea that the management of one’s personal wealth stood as a proxy for political competence, there remained considerable heterogeneity concerning *what* the proxy stood for. There was no single underlying quality that the property qualification was deemed to signal. Rather, it served as a proxy for a cluster of positive qualities in the prospective voter, such as stability, prudence, and knowledge of fiscal affairs.

2.2 THE PROPERTY REQUIREMENT: DIVERGENT TESTS AND THRESHOLDS

Convergence on the nature of suffrage restrictions in the form of property qualifications also did not eliminate debate over the *manner in which such qualification ought to be operationalised*. The way in which qualified voters should pay taxes on their property, for instance, produced heated debate. This became a particularly contentious issue in discussions over suffrage for compound householders in the 1867 bill. Under the Small Tenements Act of 1850, tenants whose housing was rated at less than £6 did not pay their own rates to the state. Instead, the rates were added to, or ‘compounded’ with, the rent paid to the landlord. Restricting the franchise to occupiers of property rated at £6, therefore, allowed Disraeli’s 1866 bill to draw on a distinction between those who paid rates themselves and those who did not.

Supporters of the government’s bill suggested that the personal payment of rates served as a proxy for traits relevant in properly exercising one’s vote. The inability to pay taxes personally was a mark of personal deficiencies: lack of punctuality, thriftiness, and stability.²⁶ Further, paying taxes directly was seen as conducive to greater interest in local concerns. Indirect payment of taxes, by contrast, would demonstrate a person’s disinterest in local affairs.²⁷ Finally, some emphasised that compound householders had the opportunity to pay their rates directly, therefore enfranchising themselves. If, despite the availability of this opportunity, they did not undertake the effort needed to enfranchise themselves, then they were to blame for disqualifying themselves.²⁸ On the other hand, critics of personal rating argued that compound householders were being unfairly excluded since they did not choose to compound. A person’s status as a compound householder was a result of the operation of a law for which he was not responsible, rather than ‘a matter of free will

²⁵ *Ibid.*, 1447

²⁶ *HL Deb* 23 July 1867, vol. 188, col. 1986 (Hugh Cairns/Member for Belfast); *HC Deb* 25 March 1867, vol. 186, col. 537 (Banks Stanhope/Member for Lincolnshire Northern).

²⁷ *Ibid.*, col. 538.

²⁸ *HC Deb* 12 April 1867, vol. 186, col. 1625 (George Hunt/Member for Northamptonshire Northern); *HL Deb* 22 July 1867 vol 188 col. 1791 (Edward Stanley/Earl of Derby)

or choice’.²⁹ As such, this was a misguided proxy for character, interest, or effort in assessing competence for the franchise.³⁰ In the end, this debate was settled by altogether eliminating the distinction between personal rate-payers and compound householders. The practice of compounding was repealed, requiring all householders to pay rates themselves.

Further, legislators in the reform debates also clashed over the appropriate *threshold* requirement for property that those enfranchised must hold. Such debates on the value of property that signalled one’s fitness as to vote. Between 1852 and 1867, when the reform act was finally enacted, no fewer than five proposals for suffrage reform were placed before Westminster. These proposals involved varying property qualifications. Consider, for instance, the different thresholds proposed for the borough franchise. Russell’s 1852 bill would have enfranchised all occupiers of housing with a £5 rating value. Derby and Disraeli’s 1859 Bill, however, would have restricted suffrage to those who occupied housing rated at £10. Russell’s 1860 bill and Gladstone’s 1866 bill, proposed enfranchising those who occupied housing with £6 and £7 rental value respectively. Indeed, much of the second reform act debate seems to have centred around *where* the line between fit and unfit voters ought to be drawn. Ultimately, the debate was settled, at least for the present, by jettisoning any such requirements, and awarding the vote to all occupiers of a household who paid rates.

2.3 EXCLUSIONS IN THE REFORM ACT

If property served as either a proxy or a precondition for competence, then it certainly justified greater expansion of suffrage. By the same token, property relations also underscored why some sections of the population remained incapable of exercising the vote properly. John Bright (member for Birmingham), prominent for advocating the working classes’ case for reform, referred to such persons as ‘residuum’, a term which came to be repeatedly used during subsequent debates on the subject:

At this moment, in all, or nearly all our boroughs, as many of us know, sometimes to our sorrow, there is a small class which it would be much better for themselves if they were not enfranchised, because they have no independence whatsoever, and it would be much better for the constituency also that they should be excluded, and there is no class so much interested in having that small class excluded as the intelligent and honest working men. I call this class the residuum, which there is in almost every constituency, of almost hopeless poverty and dependence.³¹

²⁹ *Ibid.*, col. 1644 (Edward Horsman/Member for Stroud).

³⁰ *HC Deb* 11 April 1867, vol. 186, col. 1515–16 (William Gladstone).

³¹ *HC Deb* 26 March 1867, vol. 186, col. 636–37 (John Bright/Member for Birmingham). Also see *HC Deb* 8 April 1867, vol. 186, col. 1283 (John Yorke/Member for Tewkesbury); *HC Deb* 13 May 1867, vol. 187, col. 419 (Samuel Laing); *HC Deb* 17 May 1867, vol. 187, col. 695–87 (Edward

Similarly, Gladstone, whose Liberal colleagues were sceptical of his proximity to Bright, urged that the franchise should never ‘outrun the competence’ or ‘disregard the condition of the people’.³² Nor, Gladstone insisted, should it admit men who were too poor or ill-educated to vote independently.³³ The second reform act extended the suffrage to all householders who paid local rates. But those outside this category would be continued to be seen with suspicion as the ‘residuum’ that was still unfit to vote.

Sex also continued to remain a dimension of exclusion from the franchise in the second reform act. It was not until over fifty years later that women would have the right to vote on parity with men. The second reform act debates constitute a historically significant moment as far as women’s enfranchisement is concerned. They became the first occasion where the enfranchisement of women was discussed in parliament and put to a division. On May 20 1867, John Stuart Mill introduced an amendment to replace the reform bill’s reference to ‘man’ with ‘person’.³⁴ Even as Mill introduced his amendment, he knew there was only one possible outcome, and the ensuing debate was a very short one. Yet, it is worth examining this cursory engagement before the proposal was decisively shot down by parliament.

Along expected lines, the argument for women’s enfranchisement pointed to, and, indeed, limited itself to, women who held property. If unmarried women and widows could hold property, then, by Parliament’s own account of suffrage, they could satisfy the precondition or proxy test for holding a vote. Further, many women were also educated, and, therefore, satisfied the other parameter for competence that had raised its head in the reform debates (Section 3 of this chapter). So, Henry Fawcett (member for Brighton) supported Mill’s proposal by underscoring the performance of girls in middle-class examinations held by the University of Cambridge. Girls had not only performed as well as boys in Latin, Greek and intellectual studies, Fawcett argued, but they had also ‘done their part more steadily and in a more business manner’.³⁵

Much of the argument against enfranchising women focused on the negative effects of such a move for the domestic sphere and women’s place in society. If women held a vote, domestic life would become acrimonious, with couples spending long hours engaged in political discussion. Further, political contests were understood as ‘rude and rough’ exercises, that would likely damage women’s ‘gentleness, her affection, and her domesticity’.³⁶ The structure of such arguments was similar in an important way to those advanced for the extension of suffrage to

Watkin/Member for Stockport); *HC Deb* 8 July 1867, vol. 188, col. 1205 (Eustace Cecil); *HL Deb* 30 July 1867, vol. 189, col. 419 (George Campbell/Duke of Argyll).

³² *HC Deb* 12 April 1867, vol. 186, col. 1694 (William Gladstone).

³³ *Ibid.*

³⁴ *HC Deb* 20 May 1867 vol 187 col. 829

³⁵ *Ibid.*, 837

³⁶ *Ibid.*, 833 (Edward Kent Karlake)

workers.³⁷ There, as I have argued, how a worker behaved in his domestic life was viewed as an indicator for how he would conduct himself in political life. The virtues and understanding cultivated in the sphere of domestic life would extend to a man's electoral participation. Here, we find a converse of the argument: the vices that women would develop inevitably develop by participating in political life would transfer to their conduct at home. Moreover, there was little reason, critics of women's suffrage argued, to undertake this risk. Women were already represented adequately by their husbands.³⁸ Enfranchisement, then, would confer no benefit on them, while risking profound negative effects on domestic life.

Edward Kent Karslake (Member for Colchester), interestingly, took exception to Mill's amendment on the grounds that it placed unmarried women and widows above married women. If the amendment succeeded, Karslake insisted, married women would be relegated to the status of a 'debased and degraded creature' relative to newly enfranchised women.³⁹ The argument, then, recognised the *disparity in social status* that withholding the vote could establish, a point I explore in greater detail shortly (Section 4 of this chapter). Karslake's conclusion from this was not that all women ought to hold the vote, regardless of their marital status. Since the law of coverture was established in Common Law, the best possible outcome was to withhold the vote from all women.

Discussions over workers' capacity for the franchise left its imprint on how Westminster handled the question of women's suffrage. Let us consider two such examples. The first of these consists in Parliament's position on voting papers, akin to postal ballots, which could allow voters to send in their vote without having to physically attend the polling station. I later argue that proposals for voting papers were struck down on the grounds that workers, unlike university graduates, were ill-suited for a mechanism of this sort. Since they were already vulnerable to undue influence, the absence of a secret ballot would enhance opportunities for corrupt electoral practices. Note how this decision played a part in debates over the enfranchisement of women. George Bowyer argued that the extension of suffrage to women must be accompanied by the introduction of voting papers. It was 'manifestly indecorous for them to attend the hustings or the polling-booth'.⁴⁰ This was consistent with arguments made by other critics of women's enfranchisement, who insisted that the electoral domain was a rough and brutish space, inappropriate for women. Now, since voting papers had been rejected out of concerns over workers' corrupt tendencies, women could no longer vote without having to enter a space deemed incompatible with their 'natural' traits.

Second, as Keith McClelland argues, the understanding of a 'competent' voter in the reform debates was shaped by a perceived link between fatherhood and

³⁷ See Section 2.1 in this chapter.

³⁸ *Ibid.*, 842 (George Monckton-Arundel/Member for East Retford)

³⁹ *Ibid.*, 830

⁴⁰ *Ibid.*, 841.

respectability.⁴¹ To head a household and raise a family in a fixed place was seen as ‘a guarantee for that man’s virtue’. So, the second reform act and the bills preceding it, excluded most lodgers, be they single men living in others’ households, or sharing rooms with other men. Fatherhood served as a proxy for ‘character’. It ‘invested a primarily sociological and economic phenomenon, the head of the household, with a moral status which could be embedded in political argument’.⁴² This construction of respectability as patriarchy and its alleged link with political competence meant that women, even if they held property, could not count as fit bearers of suffrage.

3. The Second Reform Act and the Educational Test

Although ownership of property remained the primary method of assessing prospective voters’ competence, the second reform act debates also offered an alternative test: education. *Why* education was relevant in the assessment of prospective voters’ fitness for the franchise requires further attention.

The alleged nexus between education and fitness as a voter acquired particularly heightened salience in the light of an amendment moved by James Clay (member for Hull) on 20th February 1866.⁴³ This amendment served as the first ever occasion when the House of Commons discussed the incorporation of an educational qualification as the basis for enfranchisement. Clay’s proposal sought to complement the existing property qualifications for holding the franchise in the cities and boroughs of England and Wales with an educational qualification. Among the most prominent supporters of this qualification, as Francis Charteris pointed out in his response to Clay, was their colleague in parliament, John Stuart Mill.⁴⁴ In this section, I examine both, Clay’s proposal as well as Mill’s, highlighting a crucial difference in the way they approached the educational qualification. Finally, I underscore how, although the final version of the second reform act eschewed such qualifications, it nevertheless privileged a certain class of educated voters.

3.1 THE CLAY QUALIFICATION: EDUCATION AS A PROXY FOR SINCERITY AND INTELLIGENCE

Clay’s proposal sought to award the franchise based on performance in a test which would include ‘writing, spelling, and the four first rules of arithmetic, compound as regards money’.⁴⁵ It is not known how precisely Clay sought to assess each of these components. This is important given the variation that existed across various calls for

⁴¹ Keith McClelland, ‘England’s Greatness, the Working Man’. In *Defining the Victorian Nation: Class, Race, Gender and the British Reform Act of 1867*, ed. Catherine Hall, Keith McClelland and Jane Rendall (Cambridge: Cambridge University Press, 2000), 98.

⁴² McClelland, *England’s Greatness*, 98.

⁴³ See *HC Deb* 20 February 1866, vol. 181, col. 825–47.

⁴⁴ *HC Deb* 20 February 1866, vol. 181, col 389.

⁴⁵ See *HC Deb* 20 February 1866, vol. 181, col. 826.

educational qualifications that had been made previously in debates on reform. Consider three such proposals:

(1) Jeremy Bentham, writing shortly before the first reform act was enacted, proposed a test which required a candidate to read out a certificate for voters.⁴⁶ Further, the candidate for the franchise would be required to read out portions of the Voting Act, randomly chosen by the examiners. Finally, the candidate would have to sign a declaration swearing secrecy of his or her vote.

(2) Consider, secondly, the test proposed by James Adam, editor of the *Aberdeen Herald*, some years after the first reform act. Like Bentham, he, too, proposed a test for the franchise which assessed prospective voters' ability to read and write. But whereas Bentham's test required only the ability to sign one's name, Adam wanted successful candidates to 'write out, in the presence of the Board, a legible and intelligible application for his right of suffrage'.⁴⁷ Further, his test for reading, too, was more demanding than Bentham's proposed measure. The latter only required candidates to read out certain documents. Adam, by contrast, insisted on examining their comprehension of such texts. His proposal involved examiners asking prospective voters to demonstrate that he understood the meaning of the author, by stating the substance of what he had read or replying to questions about the text.

(3) Thirdly, compare both proposed tests with the one suggested by Jelinger Cookson Symons, a barrister and later inspector of schools. Citing Adam's article, Symons defended an educational qualification for the franchise, stating that 'a competent knowledge of reading and writing, evidenced by the latter would give quite sufficient guarantee of the means of judgment'.⁴⁸ His proposal, then, departed from the other two examined above, by testing exclusively for a candidate's ability to write, inferring his ability to read from that, rather than assessing it separately. Symons's proposed test was more demanding than Bentham's in requiring prospective voters to write a verse or set of verses, consisting of at least 70 words, from the Gospels, or any standard English book.⁴⁹ However, it was less demanding than Adam's, since it did not require candidates to *formulate* an application and write it; rather, it only required them to *copy* them from an existing text.

⁴⁶ Jeremy Bentham, "Constitutional Code, Volume I," in *The Collected Works of Jeremy Bentham*, ed. Frederick Rosen, and James Henderson Burns (Oxford: Clarendon Press, 1983[1830]), 96-7; Jeremy Bentham, *Radical Reform Bill: with Extracts from the Reasons* (London: E Wilson, 1819), 6.

⁴⁷ James Adam, "The Knowledge Qualification: A Plan for the Reciprocal Extension of Education and the Franchise," in *Aberdeen Herald* 8 (1837): 23

⁴⁸ Jelinger Cookson Symons, *Outlines of Popular Economy* (London: Henry Hooper, 1840), 51.

⁴⁹ Jelinger Cookson Symons, *Arts and Artisans at Home and Abroad: With Sketches of the Progress of Foreign Manufactures* (Edinburgh: Neil & Co., 1839), 166.

All three proposals, therefore, viewed some form of reading and writing as necessary for the suffrage. Despite these commonalities, they varied in how they operationalised the test for an ‘educational qualification’. That said, the precise details of Clay’s test for his proposed qualification were not subject to scrutiny in the legislative debate that followed. Instead, much of the response to his bill focused on the desirability of the educational qualification. Despite concerns about its practicality, the principle of making enfranchisement contingent on one’s education enjoyed a degree of support in Parliament. Even Gladstone, a critic of Clay’s proposal, stated that ‘there is something abstractedly good in an educational test, provided it could be reduced to a form of extreme simplicity’.⁵⁰ The educational qualification was defended, firstly, (1) as a demonstration of one’s sincerity in holding the vote, which in turn, served as a proxy for how well it would be utilised and secondly, (2) as a proxy for intelligence.

The first argument emphasised the satisfaction of an educational qualification as a demonstration of one’s ‘honest earnestness’ in attaining the franchise.⁵¹ This suggestion relied on two assumptions. Firstly, it assumed that lack of effort in obtaining the vote served as a proxy for lack of effort in how one would exercise that vote. On this account, attainment of the qualification did not signal intelligence for the vote, but an entirely different trait: eagerness to obtain the vote. If one did not put effort into obtaining the franchise, one would be unlikely to invest in voting in an intelligent manner. Although left unstated in legislative debates on the subject, Mill summed up this assumption in his work on the educational qualification, when he suggested that an educational qualification would ‘exclude none but those who cared so little for the privilege, that their vote, if given, would not in general be an indication of any real political opinion’.⁵² Further, this argument also assumed that the effort required to obtain education and satisfy the qualification was feasible. After all, if satisfying the educational qualification were infeasible, then external factors, rather than lack of effort would be to blame. Thus, Clay argued that ‘..though the working man of average intelligence can master this examination if he chooses to do so, he must, for this object, sacrifice to the schoolmaster his leisure hours, few and uneasy as they are, for three or four months at least’.⁵³ Even Gladstone, in his limited support for the principle underlying Clay’s bill, endorsed the idea that effort-based tests for the vote might be acceptable:

If some test...capable of being applied to voters of all classes without raising odious distinctions between man and man according to the

⁵⁰ *HC Deb* 30 May 1866, vol. 183, col. 1477 (William Gladstone).

⁵¹ *HC Deb* 20 February 1866, vol. 181, col. 828 (James Clay).

⁵² John Stuart Mill, “Considerations on Representative Government [1861],” in *The Collected Works of John Stuart Mill*, ed. J. M. Robson (Toronto Press, London: Routledge and Kegan Paul), 19: 471.

⁵³ *HC Deb* 20 February 1866, vol. 181, col. 828. Also see *HC Deb* 30 May 1866, vol. 183, col. 1494 (George Clive).

circumstances in which it may have pleased Providence to place them...could be absolutely fulfilled, it might be wise to require that all classes of persons should conform to this educational test.⁵⁴

Clay's bill was criticised for its application only to the boroughs, excluding the county franchise from its scope. This exception prompted critics to suggest that the bill was motivated by the desire to restrict the addition of working classes' votes in the boroughs. However, the feasibility assumption built into the effort argument provided grounds for justifying the exception made for counties. Formal education was obtainable with relative ease in urban areas. But in the counties, the same instruction involved considerable trouble and expense.⁵⁵

The assumption of feasibility did not go uncontested. Even for urban working-class men, the establishment of an educational qualification would impose a significant monetary cost. Clay sought to transfer costs for administering the test to candidates for the votes, rather than the exchequer. Such costs, together with the amount spent on travel, and the wages foregone in attending the test, meant that the qualification was not as feasibly achievable as the argument about effort suggested.⁵⁶

Instantiating the second kind of argument, William Gregory (member for County Galway) argued that the educational qualification would help reduce the likelihood of corruption and enhance the quality of representatives chosen.⁵⁷ Gregory's argument relied on education as a proxy for intelligence. Similarly, Robert Montagu argued that the point of restricting suffrage based on property had been to recognise that 'the only claim to the franchise consisted in intelligence'.⁵⁸ Clay's proposal was just a better way of securing what the property franchise qualifications sought to achieve. Unlike the first line of argument, this second argument did not rely upon how feasible its realisation was for individuals. The assumption of feasibility was necessary if the educational qualification was to serve as a proxy for sincerity. However, no such assumption was necessary for linking formal education with intelligence.

But critics of the qualification rejected the idea that formal education served as a satisfactory proxy for the kind of intelligence voting required. Gladstone appealed to the *perishable* nature of formal education. A person might pass an examination and acquire the vote at the age of twenty-one. From this, one could not assume that he would continue to retain the same level of education once he was older: 'The habits of his labouring life will cause his school knowledge to rust'. Therefore, assessments of the working classes' competence ought to consider them in respect of 'their habits of life, their settled character, and as fathers of families'.⁵⁹ These provided more a

⁵⁴ *HC Deb* 30 May 1866, vol. 183, col. 1477–78 (William Gladstone).

⁵⁵ *HC Deb* 20 February 1866, vol. 181, col. 829 (James Clay).

⁵⁶ *HC Deb* 30 May 1866, vol. 183, col. 1483–84 (William Gladstone).

⁵⁷ *HC Deb* 20 February 1866, vol. 181, col. 836 (William Gregory).

⁵⁸ *HC Deb* 30 May 1866, vol. 183, col. 1492 (Robert Montagu).

⁵⁹ *Ibid.*, col. 1481 (William Gladstone).

more stable criterion than formal education. Bright further criticised Clay's bill by pointing to the *narrowness* of formal education: 'What is the object of education, except it be directed to a special question or special purpose?'.⁶⁰ A man educated in the classics and in science may well know nothing of politics. He could not be assumed to be a more competent judge of the proper representative in parliament. Even the most educated person would find it difficult to judge things about things outside his domain of expertise, Bright argued. Ultimately, Clay withdrew his amendment, and restrictions on the suffrage were based largely on the ownership of property and one's sex.

3.2 MILL'S LITERACY TEST: A PRECONDITION FOR DELIBERATION

In his 1859 pamphlet, *Thoughts on Parliamentary Reform*, Mill proposed an educational qualification for the franchise, which consisted of 'reading, writing and the simple rules of arithmetic'.⁶¹ Mill's endorsement of the educational qualification seemingly challenges crucial elements of his broader political thought. He insisted that participation in representative government would have transformative effects on ordinary voters, and help enhance their competence.⁶² But if the acquisition of competence depended on one's political participation, then why exclude anyone from participating in the political process because they are incompetent? I suggest that Mill viewed participation in the *deliberative process* as an educative exercise. Participation in political deliberation held priority over casting one's vote. Prospective voters who could not engage with the discursive process could not undergo the kind of educative experience that the exercise of suffrage demanded. The educational qualification was justified because prospective voters who failed to satisfy it were unable to participate properly in the process of political deliberation. This distinguishes Mill's argument for a literacy test from the one offered by Clay and his other colleagues in parliament. Whereas they understood literacy as a *proxy*, for either sincerity or intelligence, Mill understood it as a *precondition* for deliberation, which, in turn, was, necessary for the proper exercise of one's vote.

Mill emphasised that he did not see the vote as a matter of entitlement. Even though in most cases, there were good grounds for awarding adult citizens the vote, he did not believe people had a *right* to be enfranchised. This is because voting conferred more than just the ability to protect one's interest. It conferred 'power over others', and, therefore, established an obligation on its bearers to use it for the public good rather than one's narrow interests.⁶³ Both the open ballot—rather than a secret vote—and the educational qualification were, among other things, means of expressing this underlying principle. They would discourage the voter from

⁶⁰ *Ibid.*, col. 1513–14 (John Bright).

⁶¹ John Stuart Mill, *Considerations on Representative Government*, 327.

⁶² *Ibid.*, 368.

⁶³ *Ibid.*, 323.

conceptualising the franchise as something ‘to be used by the voter for his own interest or pleasure’, and instead view it as ‘a trust for the public good’.⁶⁴

Although enfranchisement was not a matter of right, it was justifiable in most circumstances because it facilitated the protection of persons’ interests.⁶⁵ Like other commentators on reform, Mill supplemented the interest-based argument with an epistemic one. In the absence of the franchise, the danger was not merely that others would wilfully neglect one’s interests. Rather, even well-meaning members of other classes were unlikely to understand the distinctive interests of the disenfranchised.⁶⁶ But Mill believed the uneducated failed to meet these criteria for obtaining the vote. They were, both, unable to protect their own interests, and use the vote in a manner consistent with others’ rights. Why was this the case?

Proponents of expanded suffrage in the reform debates had pointed to the rise in formal education among the working classes, and the accompanying growth in readership of newspapers and periodicals.⁶⁷ Such readership played a crucial role in Mill’s understanding of the political process. Newspapers and periodicals helped efface local distinctions, making communicative links between spatially separated voters possible. In doing so, they brought political actors together in a discursive space, like participants in the Greek *Agora*.⁶⁸ Mill’s view of the deliberative process in his time, therefore, was acutely sensitive to the scale at which debate on national issues took place. Such debate was no longer just a matter of physical presence at *Agora*-like sites. Rather, it took place in the virtual space provided by newspapers and periodicals.

The virtual space offered by newspapers was able to transcend and bring together, local concerns, orienting them to national concerns. Mill’s point about the scale of the political process is also, then, a normative one. He believed it desirable that political debate ought to be conducted at the level of the nation, rather than territorially fragmented constituencies. Note that this was also, in part, the impulse behind his endorsement of proportional representation. By removing the necessary connection between local constituencies and elected representatives, an electoral scheme of proportional representation with a transferable vote would allow for a nation-wide debate.⁶⁹

⁶⁴ *Ibid.*, 328.

⁶⁵ *Ibid.*, 404.

⁶⁶ Dennis F. Thompson, *John Stuart Mill and Representative Government* (Princeton: Princeton University Press, 2015), 19–22.

⁶⁷ *HC Deb* 12 April 1866 vol. 182 col. 1131 (William Gladstone); *HC Deb* 27 April 1866 vol. 183 col. 58 (Edward Baines). For the salience of such arguments, see James Thompson, *British Political Culture and the Idea of ‘Public Opinion’, 1867–1914* (Oxford: Oxford University Press, 2013), 96–116.

⁶⁸ John Stuart Mill, *Considerations on Representative Government*, 378.

⁶⁹ *HC Deb* 30 May 1867 vol 187 col. 1343–56; John Stuart Mill, *Considerations on Representative Government*, 456.

Mill's emphasis on the readership of newspapers was consistent with his insistence on the transformative effects of political participation. The ability to participate in the nation-wide discursive process through newspapers was necessary for the alleviation of ignorance. This argument had formed a crucial part of his defence of the freedom of the press.⁷⁰ However, the truth did not emerge merely from a collision of conflicting ideas, but as a result of the guidance provided by the instructed few to the lesser educated. The discursive process which took place through the press enabled ordinary voters to obtain such guidance:

If they [working classes] had not learnt to read, they could not have benefited by the cheap press, and the press now gave to any man, however humble his circumstances, the means of acquiring the best information respecting political knowledge, written by some of the most able men of the country.⁷¹

The idea that the press serves as the deliberative forum where the less-educated classes obtain instruction from experts, helps explain Mill's comments on the election of Louis Napoleon in France. He emphasised that Napoleon was chosen by millions of voters in opposition to 'nearly every educated person in the country'.⁷² These voters comprised chiefly of peasants, 'who could neither read nor write, and whose knowledge of public men, even by name, was limited to oral tradition'.⁷³ What is significant here is not voters' ignorance about *facts* relating to public men. Rather, ignorance of public men meant that voters were deprived of a crucial epistemic resource. Their inability to engage with national debate through newspapers meant that they were unable to access the knowledge which educated political elites could provide.

Participation through the medium of the press had other epistemic benefits as well. Mill argued that it helped coordinate collective action, by indicating to 'every person what all other persons are feeling, and in what manner they are ready to act'.⁷⁴ It is also through newspapers that 'people learn, it may be truly said, their own wishes, and through these that they declare them'.⁷⁵ But the press' role in facilitating the ability to act jointly was not just an epistemic one. Rather, Mill emphasised a critical *affective* dimension concerning its role. The press facilitated the development of solidaristic ties:

Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist. The influences

⁷⁰ John Stuart Mill, "On Liberty [1859]," in *Collected Works* 18: 228.

⁷¹ John Stuart Mill, "The Westminster Election of 1865, 3 [1865]," in *Collected Works*, 28: 31.

⁷² John Stuart Mill, "Thoughts on Parliamentary Reform [1859]," in *Collected Works* 19: 327.

⁷³ *Ibid.*

⁷⁴ John Stuart Mill, "De Tocqueville on Democracy in America II [1840]," in *Collected Works* 18: 165.

⁷⁵ *Ibid.*

which form opinions and decide political acts are different in the different sections of the country... The same books, newspapers, pamphlets, speeches, do not reach them. One section does not know what opinions, or what instigations, are circulating in another.⁷⁶

This interpretation of the educational qualification, as grounded in the inability of the uneducated to participate in a national discursive process, is also consistent with concessions Mill made to those he wished to disenfranchise. He was open to the idea of allowing disenfranchised persons to nevertheless vote in elections for local office.⁷⁷ Undoubtedly, part of the argument for this concession lay in the reduced risk of harms that incompetent voters could inflict upon others as a result of limits on the jurisdiction of local office.⁷⁸ However, this concession was also permissible because the inability to read newspapers, which rendered some persons unable to participate on a larger scale, was not a barrier to their engaging in the deliberative process in local politics. Further, it was easier to hold political leaders accountable for their speech at a local level, reducing threats of deception. On a larger scale, poor public opinion operates like the seller of bad goods in a crowded city. It is able to hide itself among the largeness of competitors, escaping the punishment that would accompany it on a smaller scale, where its producer is known to all consumers. Thus, public opinion loses its ‘simple criteria of desert’, according to which people are punished for misleading others.⁷⁹

Similarly, note Mill’s views on the open ballot. Among other reasons, he defended it on the grounds that it would enable disenfranchised persons to influence the voters’ decisions: ‘In any political election, even by universal suffrage (*and still more obviously in the case of a restricted suffrage*), the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage’ (emphasis mine).⁸⁰ He was, therefore, open to permitting the uneducated to play some role in the determination of political decisions. Would this not open the way for suggesting that such persons, if competent enough to influence voters, could be deemed competent enough to also exercise the franchise themselves? Mill thought otherwise:

This argument is specious, and I once thought it conclusive. It now appears to me fallacious. All who are fit to influence electors are not, for that reason, fit to be themselves electors. This last is a much greater power than the former, and those may be ripe for the minor function who could not as yet be safely trusted with the superior.⁸¹

⁷⁶ John Stuart Mill, *Considerations on Representative Government*, 547.

⁷⁷ *Ibid.*, 536.

⁷⁸ *Ibid.*

⁷⁹ John Stuart Mill, “Civilization [1836],” in *Collected Works* 18: 132–33.

⁸⁰ John Stuart Mill, *Considerations on Representative Government*, 490.

⁸¹ *Ibid.*, 334.

Here, again, one could explain this distinction in terms of the reduced degree of influence the disenfranchised would have in the absence of a vote. Like Mill's concession on local office, this explanation would emphasise the limited harm which incompetent voters could bring about. While this approach seems reasonable, I want to highlight another aspect of the argument: the *local* nature of influence it permits. Even without the open ballot, disenfranchised persons could seek to influence voters through their opinions. What Mill's proposal sought to add here was a heightened level of scrutiny, increasing the degree of influence disenfranchised persons could have. One is more likely to have influence when he knows how others have voted. At the same time, voters are more likely to feel the need to justify their decisions when these are made public and subject to contestation by others. Note, now, who obtains this additional power of influence. The effects of the open ballot would be to increase the influence of public opinion locally. It would ensure that 'for every voter, there is at least a chance that his friends and associates are in a position to know how he votes'.⁸² The open ballot would not grant any additional power to uneducated persons over spatially separated voters with whom they did not share discursive links. Rather, the additional level of influence granted by the open ballot would be restricted to localised voters, with whom uneducated persons could deliberate. At this level, the inability to read did not block deliberation, and, therefore, justified the limited additional influence the open ballot would give to a person. This analysis confirms, then, the idea that Mill's proposal for an educational qualification differed from Clay's insofar as it viewed education as a precondition, rather than a proxy, for competence in the prospective voter.

3.3 ADDITIONAL VOTES FOR UNIVERSITY GRADUATES

In the preceding parts of this section, I have argued that legislators in the second reform act debates flirted with the idea that education, evidenced through the ability to read and write, was relevant in assessing one's ability to properly exercise the vote. Now it is true that arguments about the value of education as either a proxy or a precondition for the suffrage did not ultimately result in an educational qualification for the suffrage. Nevertheless, there was one limited way in which possession of education did explicitly affect one's privilege as a vote-bearer under the new legislation. In the initial stages of the debate over the 1867 bill, Disraeli proposed a 'dual vote' scheme.⁸³ This would have given an additional vote to those who satisfied certain educational, professional and property qualifications. However, this scheme faced its set of critics in the constitutional debates that followed. The first set of criticisms against the bill emphasised the *futility* of this scheme. On this account, there was a means-ends mismatch, since plural votes were an inadequate way of

⁸² Nadia Urbinati, *Mill on Democracy: From the Athenian Polis to Representative Government* (Chicago: University of Chicago Press, 2002), 115.

⁸³ Saunders, *Democracy and the Vote*, 239–43.

realising the goal of keeping the effects of suffrage reform under check. To propose such a mechanism was to concede that the franchise was being extended to the wrong sort of people, and that plural votes were needed to restrict their influence.⁸⁴ Instead, critics argued, proponents of this scheme ought to reconsider the enlargement of suffrage in the first place.

A second criticism against plural votes was a *perversity* argument, which emphasised undesirable consequences that would follow from its enforcement. Gladstone argued that plural votes were undesirable since they would instigate a ‘war of classes’, by undermining the ‘mutual good-will, respect and good feeling’ that came with equality under the law.⁸⁵ In doing so, Gladstone appealed to a moral principle—equality—that ought to underpin the franchise. But instead of emphasising the violation of equality per se, his argument appealed to the negative consequences of deviating from it. I shall shortly argue that similar arguments underpinned reformers’ case for greater expansion of the suffrage as well.

Although plural votes based on property and professional association were later discarded, the principle of granting an additional vote to educated persons survived in a minimal form. Provisions granting a second vote to graduates of Oxford and Cambridge Universities were retained. Further, the benefits of these ‘graduate constituencies’ were also awarded to the Universities of London, Edinburgh, Glasgow and Aberdeen. Such constituencies would remain part of British constitutional law on the franchise until 1950 when they were eventually repealed. Incidentally, this was the same year when the Indian Constituent Assembly incorporated such constituencies in its own Constitution, following the precedent established by British imperial constitutionalism. I explore this issue in greater detail in the next chapter.

To further appreciate the epistocratic underpinnings of the extension of university constituencies, and why these were about graduates’ greater *competence* and not just their *representation*, it is worth looking closely at debates over the use of voting papers. The issue of voting papers—analogueous to postal ballots—was subject to controversy, and travelled back and forth between Westminster’s two chambers in the 1867 debates. Excluded after consideration in Committee by the House of Commons, a provision for voting papers for all constituencies was inserted through an amendment by the Lords. This amendment was later rejected by the Commons, and the House of Lords ultimately decided to accept this decision. Had the Lords’ amendment been accepted, it would have allowed electors to send in their votes through a voting paper to the election agent. This method was already followed for elections to the Universities of Oxford and Cambridge, and was extended to the newly-formed university constituencies. The extension of voting papers to ordinary constituencies was criticised on the grounds that it would increase the ‘influence of

⁸⁴ *HC Deb* 18 March 1867, vol. 186, col. 61 (Robert Lowe/Member for Calne).

⁸⁵ *Ibid.*, col. 42-3.

wealth and power’⁸⁶, and enable the intimidation of poor voters. When supporters of this device appealed to its success in university constituencies, critics were quick to emphasise the difference between voters in Oxford and Cambridge, and other ordinary constituencies:

...this clause was open to all the objections which were removed in the case of the Universities Bill, from the fact that the persons who had the vote there were persons whose education and position in society gave a guarantee that they would not be operated upon by sinister means.⁸⁷

Other legislators argued, in a similar vein, that even in university constituencies, the operation of voting papers had been far from successful. If—went the argument—despite consisting of men of learning, this method had failed, what hope could it have in constituencies made up of masses of ordinary men? The exceptionality of those constituencies lay not only in the character of their electors but also the greater guarantee of ‘sound judgment and integrity’ from its election officers.⁸⁸ Ultimately, amidst concerns about fraud and abuse of voting papers for partisan motives, the House of Commons reaffirmed its opposition to this method, overturning the Lords’ amendment. In doing so, it retained the privilege of voting papers for university constituencies, while rejecting its operation in ordinary ones. Members of such constituencies were understood as possessing greater virtue, and ability to resist corrupt behaviour, than ordinary voters.

Ultimately, then, despite criticisms about their redundancy and ill-effects, formal education, in the form of dual votes, did play a role—albeit limited—in the constitutional scheme established by the second reform act. Indeed, sex and property continued to form the primary features through which fitness for suffrage was assessed. Yet, despite the rejection of property qualifications, the nexus between education and political competence found manifestation in the plural voting scheme and limits imposed on the use of voting papers.

4. The Value of Enfranchisement

So far, I have focused on the contestation attached to different ideas of competence for the franchise, and whether or not working classes could be predicted to act competently upon obtaining a vote. In doing so, I have aimed to emphasise how debates over suffrage reform in Britain were, at least in part, grounded in anxieties about political competence, and ways in which it could be enhanced by excluding unfit agents through constitutional means. In what follows, I examine the debates from a different perspective, attempting to understand why critics of broader suffrage

⁸⁶ *HC Deb* 20 June 1867, vol. 188, col. 213 (Edward Synan/Member for County Limerick).

⁸⁷ *Ibid.*, col. 211 (George Denman/Member for Tiverton).

⁸⁸ *Ibid.*, col. 195 (Roundell Palmer/Member for Richmond).

restrictions thought that disenfranchisement was a problem. Why, in other words, did they think that the working classes *needed* and not just deserved the franchise?

4.1 ENFRANCHISEMENT AND WORKERS' INTERESTS

Firstly, proponents of suffrage reform insisted that the interests of the working classes would be better protected if they were enfranchised. Much of the reform debates rested on the notion that there existed distinctive 'class interests', and that members of every class would pursue their respective interests. As such, a 'balance' of classes was necessary to ensure that no class could have its way, pressing the legislative assembly to cater merely to its own interests.⁸⁹ Greater inclusion of workers in the suffrage, then, was necessary to prevent Parliament from disregarding workers' interests at the expense of the propertied classes. One strand of this interest-based argument insisted that enfranchisement was a *vehicle for helping secure education* for the working classes. Mill, for instance, insisted that within just a few years, the representation of workers would turn England into an educated nation—and this alone would qualify as an argument in favour of granting them the franchise.⁹⁰ The argument had been made previously by the Chartists, who insisted that 'None could value education more than we do...you may educate [the people] in the exercise and enjoyment of manhood's highest attribute, perfect freedom of thought, speech and of action...[but this] can only be attained where the people are politically equal' (emphasis mine).⁹¹ As I have previously highlighted, education was seen as a proxy or precondition for holding the franchise. The argument I have highlighted here turned that suggestion on its head, insisting that the franchise was actually a precondition for obtaining an education in the first place.

Incidentally, similar arguments were found across the Atlantic, as the scope of the suffrage became an issue of national debate in the United States Congress. The District of Columbia (DC) debates are particularly significant because they constituted the first ever time that the American Congress considered proposals for educational qualifications for voters. Although such qualifications had previously been considered and even enacted by American states, Congressional jurisdiction over DC meant that this was the first time the federal legislature addressed this issue. In 1866, just weeks before House of Commons considered Clay's educational qualification, the House of Representatives, addressed similar amendments to the DC act, aimed at instituting a literacy test for suffrage in the district. Like legislators

⁸⁹ *HC Deb* 16 April 1866 vol. 182 col. 1391 (Joseph McKenna/Member for Youghal); *Ibid.*, 1465–65 (Hugh Cairns/Member for Belfast); *HL Deb* 22 July 1867 vol. 188 col. 1837 (Henry Herbert/Earl of Carnarvon). Also see Saunders, *Democracy and the Vote*, 168–9.

⁹⁰ *HC Deb* 13 April 1866, vol. 182, col. 1263. Also see statement by John Bright, quoted in *HC Deb* 12 April 1866, vol. 182, col. 1161 (Earl Grosvenor).

⁹¹ *Northern Star*, 17 March 1838. Quoted in Joanna Innes, Mark Philp, and Robert Saunders, 'Rise of Democratic Discourse in the Reform Era: Britain in the 1830s and 1840s' In *Re-imagining Democracy in the Age of Revolutions: America, France, Britain, Ireland 1750-1850*, ed. Joanna Innes, and Mark Philp (Oxford: Oxford University Press, 2013), 123.

in Britain, Congressmen in America, too, ultimately rejected an educational qualification for the DC suffrage act. However, the deliberations over the incorporation of this test and the grounds on which it was criticised are worth examining.

The argument for an educational qualification had its share of proponents across party lines in Congress. In some cases, legislators otherwise supportive of extending formal voting rights to black citizens nevertheless insisted on the propriety of restricting the vote to those who could read the Constitution.⁹² These legislators insisted that a literacy test, despite its imperfections, loosely signalled intelligence in the prospective voter. Mill, interestingly, found mention even in the debate over educational qualifications in America. George Julian, an Indiana Representative, cited Mill in his defence of adult suffrage.⁹³ His speech was interrupted by James Garfield, an Ohio Republican who would later become President. ‘Mr. Mill, in the volume from which the gentleman has just quoted, takes strong ground in favour of suffrage restricted by educational qualifications’, Garfield urged.⁹⁴

For our purposes, particularly noteworthy is the connection that critics of literacy tests in America drew between historic denials of educational opportunities and the justifiability of educational qualifications. Some emphasised that it was wrong to advantage those who were responsible for the state of ignorance that black men found themselves in: ‘The ruling class have made them ignorant by generations of oppression and no man should be allowed to advantage of his own wrong’.⁹⁵ Others advanced an instrumentalist argument similar to the one found in British debates on this subject. As I demonstrated above, proponents of reform in Britain underscored how the franchise would serve as a vehicle for education, enabling workers to influence policies on education. In America, critics of literacy-based disenfranchisement made a similar argument from a different perspective. They emphasised how, if suffrage were tied to literacy, this would make it even less likely that persons historically excluded from education would be offered opportunities for acquiring education. As Frederick Pike (Representative from Maine) argued:

[S]uppose that after adopting this educational qualification, [a state] should fail to provide that these people whom we now know to be ignorant, shall hereafter be educated, should simply let them severely

⁹² United States House of Representatives (USHR), “39th Congress, 1st Session”, *Congressional Globe* United States Senate, (Washington: Library of Congress, 1866), 175, 10 January 1866 (James F. Wilson/Iowa); United States Senate (USS), “39th Congress, 2nd Session” *Congressional Globe* (Washington: Library of Congress, 1866), 84, 12 December 1866 (James Dixon/Connecticut); *Ibid.*, 98–100, 13 December 1866 (Lafayette S. Foster/Connecticut). All references to the United States Senate and House of Representatives in this chapter are based on this edition of the *Congressional Globe*.

⁹³ USHR 39.1: 257, 16 January 1866.

⁹⁴ *Ibid.*

⁹⁵ USHR 39.1:257, 16 January 1866 (George W. Julian/Indiana). Also see *Ibid.*, 162, 10 January 1866 (Theodore Pomeroy/New York).

alone? Or suppose that they interpose such restrictions by indirect laws as to practically prevent them from being educated.⁹⁶

In other words, some American legislators advanced a slightly different form of the British proposition concerning the franchise as a vehicle of education. The denial of the franchise on the grounds of education would incentivise denial of educational opportunities so that politically privileged groups could retain their advantaged status.

Let me now return to the second reform act debates. Indeed, for many, the problem with disenfranchisement lay in the way it allowed members of one class to pursue their interests at the expense of the other. However, many advocates of enfranchisement pursued a different line of argument, contending that enfranchisement would result in access to the increased *knowledge* that workers had about their own interests. Inclusive suffrage was valuable not just because others would decide selfishly if the working class were disenfranchised; rather, they would simply not have enough insight into workers' interests to protect them. Mill perhaps put this best when he argued in Parliament that 'Every class *knows some things not so well known to other people*, and every class, has interests which are more or less special to itself, and for which no protection is so effectual as its own' (emphasis mine).⁹⁷ Similarly, Austen Layard argued that expanding the suffrage would ensure that more working-class members would be elected to parliament. This would introduce to the Parliament legislators who were in 'constant association with them, who have that *intimate knowledge of their habits of thought, their necessities*, their real or imagined grievances, and their views' (emphasis mine).⁹⁸

4.2 DISENFRANCHISEMENT AND DELIBERATIVE ASSYMETRY

A second kind of argument about the need for the franchise emphasised its *impact upon deliberation*. This argument criticised what we could call the 'substitute thesis', according to which disenfranchised persons could continue to influence decisions through their participation in the discursive process. Proponents of the substitute thesis suggested that decisions would not necessarily be worse off for the exclusion of some persons from suffrage, because participation in public deliberation served as a substitute for the vote. As I argued above, Mill made a similar argument, attempting to harness disenfranchised persons' ability to participate discursively by recommending an open ballot. In the House of Commons, Stafford Northcote argued that:

I should like to ask upon this point, whether there is no other mode in which the various classes which ought to be heard can obtain an influence over the Government of the country than by voting for Members of Parliament? I think there is. It was said by the hon.

⁹⁶ *USHR* 39.1: 407, 24 January 1866. See also *USS* 39.2: 103–4, 13 December 1866 (Theodore Frelinghuysen/New Jersey).

⁹⁷ *HC Deb* 13 April 1866, vol. 182, col. 1259 (John Stuart Mill). Also see *ibid.*, 1260.

⁹⁸ *HC Deb* 16 April 1866, vol. 182, col. 1236 (Austen Layard). Also see *HC Deb* 20 April 1866, vol. 182, col. 1782 (Frederick Leveson-Gower).

Member for Bodmin (Mr. Leveson Gower), and said very truly, that in this country public opinion, if it did not actually govern, exercised a very considerable influence over the governing power...and the working classes at this moment have by no means an insignificant effect upon the formation of public opinion.⁹⁹

Northcote argued that education, newspapers, cheap postage and railways had provided means of communicating that the working classes had utilised well over the last three decades.¹⁰⁰ While this argument had so far been used to defend the extension of suffrage, Northcote appealed to precisely this success to push back against calls for reform. He argued that the working classes' ability to use the above mechanisms to become a significant political force meant that they no longer needed to rely on the vote.

Against the substitute thesis, proponents of reform urged that the vote was crucial to proper deliberation aimed at the evaluation of workers' claims. George Campbell (Duke of Argyll) argued that incorporation as voters would increase the influence of the working classes by leading to a 'more friendly consideration of their claims'.¹⁰¹ Such a move would 'stimulate and increase the regard in which these claims will be held by those above them'.¹⁰² This is crucial because it ties the vote to deliberation in an important way. Campbell's statement points to how enfranchisement can help produce *deliberative symmetry*: having more political influence means the greater likelihood of having one's claims taken seriously. This does not, however, mean that these claims would be accepted without regard to their strength. On the contrary, taking claims seriously and developing greater sympathy with the complaints of hitherto neglected groups would allow for a more 'candid allowance even for their prejudices and errors'.¹⁰³ In a similar vein, Frederick Leveson-Gower (member from Bodmin) argued that many non-electors, despite being 'addicted to politics', would not communicate with him freely.¹⁰⁴ They had told him they did not like to do so because they did not hold a vote. Enfranchising such persons would 'give this class a greater cause to take an interest in political questions'.¹⁰⁵ As such, deliberation under conditions of disenfranchisement was unlikely to produce the kind of engagement assumed by the substitute thesis. Finally, William Graham (member for Glasgow), too, instantiated this approach, arguing that the advantage of expanded suffrage lay in 'disabusing us of many prejudices, and relieving us of many fears as to what the aims of these working classes are'. This would help the existing political elites 'understand

⁹⁹ *HC Deb* 20 April 1866, vol. 182, col. 1820–21.

¹⁰⁰ *Ibid.*

¹⁰¹ *HL Deb* 23 July 1867, vol. 188, col. 1958.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *HC Deb* 20 April 1866, vol. 182, col. 1782.

¹⁰⁵ *Ibid.*, col. 1783.

them better and trust them more', resulting in a process of mutual learning and cooperation.¹⁰⁶

Why, though, would disenfranchisement vitiate deliberation? Why did proponents of reform believe that exclusion from the vote would result in one's claims being taken less seriously? The precise mechanism behind this suggestion was unclear. One way in which we could understand the deliberative impact of disenfranchisement is by focusing on the *social meaning* of the latter. Proponents of reform argued that to leave some men out of the vote was to 'insult' or 'wound' them by casting aspersions upon their character. In response to a proposal to exclude felons from the vote, Gladstone rejected the idea, arguing that 'if a man left prison with a sincere desire to fulfil his duties as a citizen he ought not to bear for life the brand of electoral disqualification'.¹⁰⁷ In his amendment in parliament to include women in the franchise, Mill argued that 'an unworthy stigma would be removed from the whole sex. The law would cease to declare them incapable of serious things'.¹⁰⁸ Earlier, in a meeting with his constituents, he had similarly argued that those left outside the franchise were rendered 'pariahs'.¹⁰⁹ Shortly after the second reform act was enacted, Charles Monk (member for Gloucester) insisted that revenue officers, hitherto excluded from the franchise, ought to be granted the vote. Their continued disfranchisement 'as was seen as a 'stigma and as a disgrace' for people who were, in fact, capable of exercising the franchise in a competent manner'.¹¹⁰

The reform debates did not just clarify, but also played a role in *constructing* the social meaning of enfranchisement. The terms of the reform debate had been set in a manner that those excluded from the franchise would be viewed as persons in whom society could not repose trust. Since judgments about persons' suitability for such trust derived from their observed social behaviour and habits, disenfranchisement would constitute a negative judgment on their social status. Much ire, for instance, was directed at Robert Lowe (member for Calne) who had delivered an infamous speech criticising suffrage reform. Lowe had argued that expansion of the suffrage would entail giving political power to 'impulsive, unreflecting and violent people' characterised by 'venality.. ignorance..drunkenness'.¹¹¹ A fierce proponent of reform like John Bright, too, insisted that there was indeed a despicable class—the 'residuum'—which did not deserve a share in political power.¹¹² From Bright's perspective, the problem lay in clubbing together worthy men with this genuinely depraved class.

¹⁰⁶ *HC Deb* 19 April 1866, vol. 182, col. 1651 (William Graham).

¹⁰⁷ *HC Deb* 12 July 1867, vol. 188, col. 1448. Also see *ibid.* col. 1550 (Frederick Leveson-Gower).

¹⁰⁸ *HC Deb* 20 May 1867, vol. 187, col. 825.

¹⁰⁹ John Stuart Mill, "The Westminster Election of 1865, 4 [1865]," in *Collected Works* 28: 39.

¹¹⁰ *HC Deb* 12 June 1868, vol. 192, col. 1535 (Charles Monk). Also see *HL Deb* 13 July 1868, vol. 193, col. 1079 (William Scarlett).

¹¹¹ Robert Lowe, *Speeches and Letters on Reform with a Preface* (London: R.J. Bush, 1867), 74.

¹¹² *HC Deb* 26 March 1867, vol. 186, col. 636–37.

In sum, the second reform act debates constructed the social meaning of disenfranchisement as a mark of disrespect, and its commentators seized on precisely this view to advance their argument for the expansion of suffrage. In Chapter 5 (Section 5.2), I argue that there is an important connection between this insight and their insistence that disenfranchisement entailed discursive costs insofar as it produced deliberative asymmetry.

5. Conclusion

This chapter has attempted to reframe debates over the second reform act as contestations over competence for the exercise of the franchise. It has underscored the multiple ways in which constitution-makers wrestled with the complex question of how to distinguish competent from incompetent prospective voters. I argue that the debates were underpinned, in the first instance, by competing understandings of methods of judging competence. Different legislators disagreed about how to draw on proxies or preconditions of competence in order to distinguish those who deserved the franchise from those who ought to be excluded. These were further underpinned by varying views of the qualities that a proxy or precondition ought to identify. Even when legislators did eventually converge on a property qualification, there remained considerable controversy about *where* to draw the line between the fit and the unfit.

Further, I outlined the different kinds of arguments through which proponents of reform defended the value of enfranchisement. These appealed to the role of enfranchisement in protecting workers' interests, particularly those in obtaining education; the nexus between the vote and deliberative symmetry; and finally, the social meaning of the vote, and the stigmatisation that its absence entailed. In the second part of this thesis, I demonstrate how these arguments can assist in strengthening the case against epistocratic disenfranchisement.

3

Legislative Office Qualifications: The Indian Constituent Assembly and its Democratic Experiment

The countries of the world where we find [a] democratic set-up, transitions to democracy took place hand-in-hand with progress in other spheres, i.e. political, economic and scientific. It has not been a very abrupt switch on to adult franchise in those countries. If we go into details as to how they came to adopt adult franchise, perhaps the house will be convinced that only in those countries adult franchise has been in the most natural manner introduced where adequate progress has been made in the educational sphere. It is extremely unfortunate for us to contemplate that anachronistic conditions exist in our country...In our country, it seems as it were the average voter has one foot on the rocket and another foot on the donkey.¹

This chapter turns to another constitutional mechanism of competence-based exclusion: legislative office qualifications. I demonstrate ways in which the Indian Constituent Assembly viewed such qualifications as a way of compensating for the alleged incompetence of voters. The first section provides a background to the Assembly's deliberations and an overview of the commentary on its approach to democratic principles. In the second section, I argue that the Indian Constitution chose not to impose legislative office qualifications in constituencies where it applied restrictions on the suffrage. This underscores the idea that support for restrictions on office stemmed from concerns about voters' inability to elect competent representatives. The third section highlights the Indian Constituent Assembly's openness to restricting legislative office to putative experts. This was manifested in two ways: through the specific restriction of some legislative offices to specific kinds of experts (Section 3.1); and second, through tacit permission for Parliament to introduce educational qualifications in the future (Section 3.2). The fourth section turns to the views of Bhimrao Ramji Ambedkar, widely considered one of the chief architects of the Indian Constitution, on descriptive representation and qualifications for legislative office.

¹ Parliament of India, *Parliamentary Debates* (New Delhi: Manager of Publications, 1950), Part 2, Vol. 4: 2510, 4 April 1950 (Shyam Nandan Prasad Mishra/Member for Bihar). Henceforth, references to these debates are abbreviated as *PD* with part and volume number provided.

1. The Idealised View of the Assembly's Democratic Approach

In September 1945, the newly-elected Labour Government in Britain, headed by Clement Attlee, announced its intention to hold elections to India's provincial legislatures. These provincial assemblies were to serve as electoral bodies for the Constituent Assembly, which was tasked with framing a Constitution for independent India. The Labour government dispatched a mission commonly called the 'Cabinet Mission' and charged it with facilitating negotiations between the Indian National Congress and the Muslim League. However, the Muslim League under Mohammad Ali Jinnah was distrustful of the Congress and equated it with the dominance of Hindus. It called for the creation of a Constituent Assembly for Hindustan, and another for Pakistan—a state they asked to be carved out for Muslims. The Congress, though, insisted that the people of India were Indians, regardless of their religion. It saw itself as an umbrella party, consisting of Hindus, Muslims, and many communities of India, committed to self-determination by India, and the overthrow of the British imperial government.² Eventually, talks between the Muslim League and the Congress broke down even as the Assembly was convened on 9th December 1946. In December, the members of the Assembly still hoped that the League would join the Assembly, but this began to look like a very distant possibility by the time the Assembly met next in January 1947.³ Partition was imminent by the end of April when the Assembly met for the third time and it became a reality on June 3, 1947. The Indian Independence Act passed by the British Parliament came into force on August 15, 1947, and the Constituent Assembly set out to draft the Indian Constitution.

The dominant view within scholarship on the Constituent Assembly Debates is that its participants were more or less unanimous in their endorsement of adult suffrage in India, without any qualifications on sex, property or education. Granville Austin argues that 'Belief in the principles of parliamentary democracy appears most strikingly in the nearly universal approval of adult suffrage—which had come during the years of the independence movement to mean direct elections'.⁴ He suggests that 'Since the nineteen-twenties, the Congress had demanded adult suffrage for the people of India; it had become a *sine qua non* of independence'.⁵ Similarly, Ingrid Creppell urges that 'It is clear from the Constituent Assembly Debates that granting the franchise to India's entire adult population appeared, for the most part, a foregone conclusion'.⁶ Three lines of argument can be found explaining how this position came about.

² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Oxford University Press, 1999), 5.

³ *Ibid.*, 9.

⁴ *Ibid.*, 46.

⁵ *Ibid.*, 58.

⁶ Ingrid Creppell, "Democracy and Literacy: The Role of Culture in Political Life," *European Journal of Sociology* 30, no. 1 (May 1989): 40.

The first line of argument emphasises the *ideological* commitment of the Indian leadership to the democratic process with unqualified suffrage. Such commitment is seen as a product of acceptance of modernist premises by members of the Constituent Assembly. Modernity here was understood as implying democracy underpinned by political equality. It was an idea whose ‘time had come’.⁷ The rhetoric of democratisation that rationalised the Second World War contributed to the solidification of this ideological framework. The arrival of democracy, however, was not merely an inevitability; it was also aspirational. The Indian Constitution was viewed as an instrument for overcoming a traditional, hierarchical order with a modern and egalitarian one. It constituted citizens as bearers of those liberal rights which they had previously been denied by both the colonial government and social elites in the pre-colonial era. In particular, adult suffrage was seen as a way of overcoming the emphasis on ascriptive identities that had been perpetuated by the colonial government in its engagement with Indian people.⁸ Rather than attempting to negotiate, as colonial officials had done, a fair balance of political power between communities, adult suffrage would provide a simple mechanism for establishing a fair and equitable political system.

Even where the Constitution retained elements of the old order, a discursive shift accompanied their justification. Previously, for instance, intervention by the state in the regulation of speech was justified by reference to incapacities of the natives. Unlike British subjects, Indians could not act as proper autonomous, self-governing agents. Colonial officials had used this discursive strategy to justify a range of restrictive legislation, such as the law on sedition. Now, the Indian Constituent Assembly defended the same penal laws by appealing to the identity of those who would operate it: Indians, rather than alien officials. Thus, even illiberal governmental mechanisms now refrained from suggesting that its subjects were ‘unfit’ for enjoying certain kinds of freedoms.⁹

A second argument emphasises *strategic* considerations that went into the award of adult suffrage with the inauguration of the new constitution. Years of having opposed the colonial government for curtailing political rights meant that it would be politically unwise for framers of the Constitution to backtrack on adult suffrage. After all, this opposition was developed in the form of a mass movement with the Indian National Congress at its forefront, claiming to fight for political power on behalf of the disenfranchised masses. Not only was it politically inexpedient to backtrack on the franchise, rather, strategic considerations weighed in favour of adopting universal

⁷ Christopher Alan Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2011), 308–09.

⁸ Rajeev Bhargava, *The Promise of India’s Secular Democracy* (New Delhi: Oxford University Press, 2010), 28–33; Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (New Delhi: Oxford University Press, 2011), 91–2.

⁹ Gautam Bhatia, “The Conservative Constitution: Freedom of Speech and the Constituent Assembly Debates,” In *Deliberations on Democracy: The Indian Constituent Assembly Debates*, ed. Udit Bhatia (London: Routledge, 2017), 103–29.

suffrage in the new constitution. This could help institutionalise the de facto authority that the Congress held among the masses.¹⁰ Mohammad Ali Jinnah, leader of the Muslim League, viewed this strategic consideration as crucial to the Congress' stance on adult suffrage:

There are in India roughly 400,000,000 souls who, through no fault of their own, are hopelessly illiterate and consequently priest- and caste-ridden. They have no real conception of how they are being governed even to-day and it is proposed that to the elected representatives of such should India's future constitution be entrusted. Is it too much to say that, since the vast majority of the elected representatives will be illiterate Hindus, the Constituent Assembly will be under the influence of Mr. Gandhi and the Congress leaders...?¹¹

The hegemonic status of the Congress at the time of independence also provided 'insurance' against possible side effects of granting the franchise.¹² The partition of India and the formation of Pakistan strengthened its hegemonic status, as its primary competitor in the electoral arena, the Muslim League, no longer posed a serious threat. The Congress' dominance reflected in elections to the Constituent Assembly, which was aptly described by Granville Austin as a 'one party body' in a 'one party country': 'The Assembly was the Congress and the Congress was India'.¹³

A third argument emphasises *cultural* reasons for eschewing qualifications like those based on education in the award of the franchise. Ingrid Creppell argues that widespread literacy is a necessary condition for an endogenously-held cultural valuation of literacy. That is, for literacy to be projected as a precondition for a vote, it must be internally valued by members of a particular polity as something indeed worth having. However, in India, literacy was not widespread enough to be valued as a cultural norm. Barely ten per cent of the population at that time was literate, and therefore, a literacy qualification would have 'functioned as too crude a political device, providing no sticking point'.¹⁴

Notwithstanding the force of these arguments, they ignore, in the first instance, how the Assembly was not unanimous on the question of adult suffrage. On 4th January 1949, Thakurdas Bhargava (member from East Punjab) argued that the constitutional provision requiring adult suffrage should be amended to disqualify

¹⁰ For a similar account of adult suffrage as a legitimating device, see Nandini Gooptu, "The Political Legacy of Colonialism in South Asia," in *India and the British Empire*, ed. Douglas M. Peers, and Nandini Gooptu (Oxford: Oxford University Press, 2012), 342.

¹¹ Anil Chandra Banerjee, ed. *Indian Constitutional Documents 1757-1947, Volume IV: 1935-1947* (Calcutta: A Mukherjee & Co., 1965), 144.

¹² Creppell, *Democracy and Literacy*, 44.

¹³ Austin, *The Indian Constitution*, 10.

¹⁴ Creppell, *Democracy and Literacy*, 42.

illiterate members from the vote.¹⁵ Without such qualifications, he suggested, elections in India would be a ‘farce’. Bhargava proposed that the Constitution ought to implement such a disqualification for the first ten years. Interestingly, the Constituent Assembly’s Advisory Committee had previously rejected a draft provision entitling every citizen to free primary education within a period of ten years.¹⁶ Thus, Bhargava’s proposal sought to institute a qualification, which, by the Assembly’s own admission, the State was unable to ensure it could assist citizens to satisfy. Other members also explicitly voiced their criticism of adult suffrage during the Assembly’s proceedings. Hriday Nath Kunzru (member for the United Provinces), for instance, suggested that the franchise ought to have been postponed for fifteen years, restricting it to less than fifty per cent of the population for the time being. He suggested that the ignorance of the electorate meant that the franchise ought to be expanded only gradually in order to guard against demagoguery.¹⁷ Kunzru’s argument found support from Frank Anthony (member for Central Provinces and Berar), who suggested that a largely illiterate electorate would be ‘predominantly unaware of exercising the franchise on a basis of being able to analyse political issues in a rational way’.¹⁸ Both proposals were underpinned by the notion that literacy served as a proxy for rational reflection, which was necessary for judging political issues and voting appropriately.

Indeed, none of these members formally pressed an amendment against the universalisation of the franchise. However, it is worth looking beyond explicit criticism of adult suffrage per se. Some have argued that the history of India’s nationalist discourse had constrained the Constituent Assembly’s functioning such that its members found it incumbent upon themselves to institute adult suffrage. But did all members find these constraints acceptable? Prabhudayal Himatsingka’s (member for West Bengal) statement points to why we might doubt this: ‘But there it is, having advocated adult suffrage, it has become impossible for the leaders to say that they do not like it. *I know many do not relish the provisions of adult suffrage but they dare not say so*’ (emphasis mine).¹⁹ Similarly, M. Ananthasayanam Ayyangar (member for Madras) argued that adult suffrage had been adopted ‘in keeping with

¹⁵ *Constituent Assembly Debates* (Official Report), Vol. 7.2 (New Delhi: Government of India Press, 1946-1950): 1245, 4th January 1949. All references to the Constituent Assembly Debates are provided with volume, page number, and date, to this edition.

¹⁶ Constituent Assembly of India, “Advisory Committee Proceedings,” in *The Framing of India’s Constitution: Select Documents* ed., B. Shiva Rao (New Delhi: Universal Law Publishing, 1967[1947]), 2: 272.

¹⁷ Quoted in *CAD* 11: 939, 25 November 1949 (Frank Anthony/Member Central Provinces and Berar).

¹⁸ *Ibid.* Similarly, M. Thirumala Rao (Member for Madras) argued in favour of a ‘graded’ expansion of the franchise. Referring to adult franchise as a ‘dangerous weapon’, Rao pointed to the lack of education and insufficient development of patriotism to support his statement. Unlike the middle classes and intelligentsia, others had not sufficiently imbibed the values necessary for the proper exercise of the franchise. See *ibid.*: 818, 22 November 1949.

¹⁹ *Ibid.*: 669, 18 November 1949.

the times', but left to himself, he would have sought alternatives until adult education became available to all persons.²⁰

Several undertones questioned the wisdom of the franchise in India.²¹ One finds various references to adult suffrage in the context of the franchise as a 'risk', or an 'experiment'.²² Even some members who otherwise endorsed the principle of adult suffrage occasionally adopted such vocabulary:

Another redeeming feature is the adult franchise. The adult franchise is the greatest risk which the Constituent Assembly has taken. I may tell the House it is the greatest risk for this reason that 85 per cent of our population is illiterate and it is even now doubted whether the adult franchise will be successful. Whatever it may be, Sir, successful or not successful, we have taken the risk rightly. We had to take the risk and we have taken the risk. A democracy without adult franchise would have no meaning and, therefore I am very glad and the House is proud that we have in this Constitution put in 'Adult Franchise'.²³

The notion of an experiment implies a departure from tried and tested ways. The Indian masses had been previously ruled only by monarchs and colonial governments. The adoption of democracy, then, marked a break from their past into an uncertain future. However, there was another crucial sense in which the democratic system in India constituted an experiment. Here, the point of reference was not its own past, but that of the modern west. There, democracy had emerged only with the rise of mass literacy. Thus—the argument went—India had gambled by choosing to take the unprecedented step of enfranchising illiterate citizens whereas industrialised societies had adopted a very different political trajectory.

Ultimately, it is true that the framers of the Indian Constitution largely rejected restrictions on suffrage. But, as this chapter argues, focusing merely on the suffrage makes invisible ways in which concerns about political competence continued to inflect the Assembly's decisions. In particular, I emphasise how, once the principle of universal adult franchise had been affirmed, much of the Indian Constitution's concerns about political competence were directed to those who held *legislative office*. Whereas suffrage continued to be universally available, the Constitution either explicitly restricted such office in some cases or tacitly permitted competence-based

²⁰ *Ibid.*: 663, 18 November 1949. Loknath Misra (member for Orissa), too, argued in favour of indirect elections, with representatives to the legislature chosen by members of the *Panchayat* (governing council) for each village (*CAD* 7.1: 648, 20 November 1948).

²¹ In my previous work, I have demonstrated how such suspicions were especially acute with respect to the political competence of indigenous persons. See Udit Bhatia, "Precautions in a Democratic Experiment," in *Constituent Assemblies*, ed. Jon Elster, Roberto Gargarella, Vatsal Naresh and Bjorn Rasch (Cambridge: Cambridge University Press, 2018), 109–37.

²² See *CAD* 5: 300, 28 August 1947 (D.H. Chandrasekharaiya/Member for Mysore); *Ibid.*: 302, 28 August 1947 (Vallabhbhai Patel/Member for Bombay); *CAD* 7.1: 960, 10 December 1948 (K.T. Shah/Member for Bihar); *CAD* 7.2: 1255, 4 January 1949 (Biswanath Das/Member for Orissa); *CAD* 10: 271, 14 October 1949 (Shibban Lal Saxena).

²³ *CAD* 11: 624, 17 November 1949 (R.K. Sidhva/Member for Central Provinces and Berar).

limitations in others. Before proceeding, however, I begin by noting an exceptional case where the franchise itself was limited to voters who were deemed competent.

2. Restricted Suffrage without Legislative Office Qualifications: The Exceptional Case of Article 171

I begin my analysis of restrictions on legislative office by analysing one area where these were notably absent: constituencies for university graduates and school teachers. These constituencies marked an exception to the Indian Constitution's establishment of universal suffrage by granting the franchise only to a specific class of educated voters. I begin by exploring the rationale for this constitutional provision before comparing it with, both, its British counterpart, and the American approach to the franchise-office nexus.

2.1 UNIVERSITY CONSTITUENCIES IN INDIA AND BRITAIN

Article 171 of the Constitution established the method of election to the second chamber in India's state legislatures (*Vidhan Parishad*). It determined that a twelfth of the seats in every Vidhan Parishad would be filled by voters who held a graduate's degree. Under the colonial government, graduate constituencies had been represented, among other civic interest groups, since 1887 when they had been introduced by Lord Dufferin, then Viceroy of India. Indeed, their role in the postcolonial constitution stood considerably diminished. In the first place, the Indian Constituent Assembly removed all special seats, including university constituencies, from the directly elected houses of provincial legislatures.²⁴ Further, the principle of awarding votes to organised corporate interests was also explicitly rejected.²⁵ Members of the Assembly agreed that "There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women".²⁶ This proposition resonated with the line of reasoning prominent in the Indian Constituent Assembly that the adult franchise was the best way to distribute political power. The principle of one-person, one-vote would establish fairness of equality and eliminate the need for further mechanisms like quotas or special representation.

²⁴ Under the Government of India Acts enacted by the British parliament, there were University Constituencies for the directly elected house of provincial legislatures. Members elected from university seats sat alongside, and enjoyed the same legislative privileges as, those directly elected through the qualified suffrage.

²⁵ In addition to University Constituencies, the Government of India Acts provided for a range of other special seats, arranged for the representation of communal and corporate interests. There were seats for scheduled castes, backward areas and tribes, Sikhs, Mohammedans, Anglo-Indians, Europeans, Indian Christians, representatives of labour as well as commerce, industry, mining and plantation, landholders, and women.

²⁶ Constituent Assembly of India, "*Report of the Provincial Constitution Committee*," in *The Framing of India's Constitution*, ed. B. Shiva Rao (New Delhi: Universal Law Publishing, 1967[1947]), 2: 671.

Yet, despite the novel approach to federal legislatures, matters were different in the Vidhan Parishads. If previously recognised corporate interests—those of commerce, mining, plantation—were eliminated, the second chamber in the states extended the franchise to more members within the educational establishment than before. Departing from the emphasis on universities, teachers in secondary and senior secondary schools were extended identical privileges as graduates, and awarded the power to elect another one-twelfth of the state legislatures. The underlying assumption here was that such persons would, in their choice of a representative, prefer someone like them in the relevant respect: education.

Two assumptions underpinned the Assembly's approach to Article 171. The first of these was that formal education stood as a proxy for competence as a legislator. The exclusive constituencies these established would enable the entry of 'real intelligentsia, men of real opinion' into the legislature. Here, the contrast seems to have been with self-serving politicians, who relied on the base, easily-divided uneducated voters to serve their personal gain. Under India's bicameral arrangement, at the federal as well as provincial level, the second chamber had been conceptualised as an assembly of individuals with superior competence. Such individuals were necessary for oversight over the first legislative chamber, which was directly elected under universal adult suffrage. As I will demonstrate later in this chapter (Section 3.2), legislative office qualifications for nominated members served as another route for securing the legislative presence of superior individuals. Moreover, as the next chapter will emphasise, indirect elections were defended as yet another way of promoting competent individuals who might otherwise be rejected by the wider electorate. Together, these mechanisms were aimed at bypassing ordinary democratic processes to ensure that legislative power was vested in those who demonstrated competence.

Second, members of the Assembly assumed that the kind of legislators Article 171 would secure would be put-off by the electoral climate that characterised constituencies made up of uneducated voters, where they would have to go through the 'rough and tumble of active politics'.²⁷ Of course, graduates' and teachers' constituencies did not altogether eliminate the need for participation in the electoral process. After all, even representatives from such constituencies would first need to run for office and persuade voters that they were the best candidate. However, Article 171 could be understood as an attempt to engineer conditions conducive to attracting educated candidates to the electoral process. Across the Constituent Assembly, several members appealed to the idea that uneducated voters were unintelligent—they lacked rationality and were prone to divisive, chaotic political leaders and demagogues. Members of the Assembly relied on the assumption that educated

²⁷ CAD 9.1.: 33, 30 July 1949 (Purnima Banerji/Member for the United Provinces). Also see *ibid.*: 24–25, July 30, 1949 (Shibban Lal Saxena/Member for the United Provinces).

leaders would find the prospect of engaging with such constituencies unattractive. A university degree or career in education, then, served as a proxy for the kind of rationality among voters that would appeal to the political sensibilities of educated prospective candidates for office.

Interestingly, the Indian Constituent Assembly chose to incorporate university constituencies merely months after the British Parliament abolished them. Although previous attempts had been unsuccessful in 1931 and 1936, the amended Representation of People Act of 1948 finally eliminated university constituencies in Britain. Here, it is worth noting how the constitutional provision on graduate constituencies in India differed from its British roots in one crucial respect. In Britain, only members of a university constituency were eligible to represent such a constituency. Thus, electors in the university constituency for Oxford could only elect someone among themselves: someone who was also a graduate member of the University of Oxford. Under Article 171 in India's Constitution, however, neither the universities' nor teachers' constituencies were required to elect one of their own. The underlying assumption seems to have been that they would, as a matter of course, do this, but the Constitution itself did not specify that they act in this manner. I have argued above that the incorporation of Article 171 was premised on the idea that educated candidates for office would prefer interacting with educated voters, rather than uneducated ones. The preference, according to the Indian Constituent Assembly, was mutual. To that extent, the Indian constitution-makers' approach mirrored the Americans' insofar as securing the appropriate electors through the proxy of formal education rendered fetters on their choice unnecessary. It is worth exploring the American Constitution's divergent approach to the franchise and legislative office in greater detail.

2.2 THE FRANCHISE-OFFICE RELATIONSHIP IN AMERICA

The convention that drafted the American Constitution produced limited qualifications for federal office. The Constitution only provided qualifications pertaining to (1) age, (2) residency and (3) citizenship for House representatives, senators and Presidents. Such restrictions were defended, first, on the grounds that they served as a proxy for the kind of competence legislators needed to cultivate to perform their constitutional role. Age, for instance, was seen as a marker of maturity. The higher age requirement for legislators was defended as a way of excluding those who held beliefs 'too crude and erroneous to merit influence on public opinions'.²⁸ Similarly, constitution-makers in America defended the residency and citizenship requirements as a way of giving legislators time for 'knowing the dispositions and

²⁸ Max Farrand, ed. *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1911), 1: 375, 22 June 1787 (George Mason/Delegate from Virginia). Henceforth, these are cited as *RFC*.

interests of his constituents’.²⁹ On the other hand, all three requirements were also justified on the grounds of the greater time they gave to voters to better evaluate competing candidates for legislative office. Observing legislators who were older, and had been a member of their political community over a period of time, gave voters a ‘full and mature opportunity of knowing the character and merit of their representative’.³⁰

It is worth remembering, though, that more expansive qualifications were initially proposed for legislative office. Crucially, qualifications pertaining to income and property for legislative office were proposed but ultimately rejected, at the Philadelphia Convention. One line of argument against property qualifications insisted that these were a poor proxy for the abilities needed for good political leadership. For instance, during the ratification debates in Massachusetts, Rufus King insisted that ‘We often see men, who, though destitute of property, are superior in knowledge and rectitude. The men who have most injured the country have most commonly been rich men’.³¹ In a similar vein, Thomas Jefferson had previously argued that wealth and ‘integrity’, the desired quality in a legislator, did not always go together.³² This was an important argument insofar as framers of the Constitution had left voter qualifications untouched, enabling states to restrict them on the grounds of property. The Constitution permitted, then, the notion that possession of property could justifiably be used to distinguish competent from incompetent voters, without incorporating similar ideas in its provisions on federal office.

Notably, at the time of the Philadelphia Convention, property qualifications were also attached to holding legislative office in almost every state.³³ Further, all states except Virginia and Delaware stipulated higher property qualifications for their respective senates compared to the lower houses.³⁴ Indeed, part of the argument for such qualifications focused on the need for legislators who had an interest in safeguarding a universal right to property. Such arguments were most prominent in the context of calls for higher qualifications for the states’ senates compared to the lower houses. On this account, ‘a popular assembly would be inclined to shift private and public burdens of debts and taxes onto the wealthy, and this sort of policy would

²⁹ James Wilson, “Lectures on Law [1791],” in *Collected Works of James Wilson*, ed. Kermit L. Hall, and Mark David Hall (Indianapolis: Liberty Fund, 2007), 2: 845.

³⁰ *Ibid.*

³¹ Jonathan Elliot, ed. *The Debates in the Several State Conventions of the Adoption of the Federal Constitution*, (Philadelphia: J. B. Lippincott, 1827), 2: 35, 17 January 1788.

³² Thomas Jefferson, “To Edmund Pendleton [1776],” in *Writings*, ed. Merrill D. Peterson (New York: The Library of America, 1984), 756.

³³ William Clarence Webster, “Comparative Study of the State Constitutions of the American Revolution,” *The Annals of the American Academy of Political and Social Science* 9, no.3 (1897): 392.

³⁴ Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill and London: University of North Carolina Press, 2011), 214.

violate the principle of an equal and broad right to acquire and dispose property'.³⁵ Senators' special interests in protecting property, guaranteed by their own possession of property, would facilitate the protection of such right. However, the argument from interests was only part of the case for property qualifications. Such qualifications were also seen as a way of ensuring greater wisdom among legislators. In particular, higher qualifications were seen as pivotal in securing a 'Senatorial class', distinguished in its ability from members of the lower chamber. As Gordon Wood argues, 'Both Madison and Jefferson were baffled by the apparent inability of the people to perceive the truly talented and were thus compelled reluctantly to endorse property as the best possible source of distinction in the new republics'.³⁶ Reluctant advocates of such qualifications recognised that the connection between property and ability was a tenuous one. Yet, 'Although wisdom and integrity were difficult to measure, property was not'.³⁷ In other words, state legislatures in America maintained that a property qualification, despite its imperfect prediction of competence, could justifiably be used as a loose proxy for securing superior legislators.

Despite such arguments for restrictions, the Philadelphia Convention ultimately precluded the possibility of property qualifications for federal office even as it allowed the states to formulate their respective qualifications for voters in federal elections. Some have insisted that consensus on federally-established voter qualifications was not politically feasible at the Philadelphia Convention given the varying regulations that were in place in different states.³⁸ But one might say the same for legislative office qualifications, where existing rules varied across states. Why, then, did the American Constitution limit the qualifications that could be imposed on federal office while enabling states to regulate the franchise? One possible explanation for this divergence is that, since the franchise was left subject to restrictions, qualifications for office were unnecessary. By limiting the vote to those who could be trusted to exercise it competently, the Constitution eliminated the need for restrictions on electors' choices. Gouverneur Morris, for instance, made this explicit when he argued that 'If qualifications are proper, he would prefer them in the electors, rather than the elected'.³⁹

In this respect, the Indian Constituent Assembly's position on Article 171 can be said to mirror the American Constitution's approach. That is, where the franchise was restricted to trusted voters—teachers and university graduates—there was no need to impose further qualifications for those who could be elected. As I will demonstrate in the remainder of this chapter, the converse was also seen as true: where no such

³⁵ Daniel Wirls and Stephen Wirls, *The Invention of the United States Senate* (Baltimore and London: The Johns Hopkins University Press, 2004), 53.

³⁶ *Ibid.*, 218.

³⁷ *Ibid.*

³⁸ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 23–4.

³⁹ *RFC* 2: 121, 26 July 1787 (Gouverneur Morris/Delegate from Pennsylvania)

qualifications existed on the franchise, legislative office qualifications acquired heightened salience.

3. Universal Suffrage with Legislative Office Qualifications

One could concede that restrictions on suffrage established by Article 171 constituted a minor exception to the Indian Constituent Assembly's endorsement of universal adult suffrage. To that extent, the idealised view that the Assembly committed itself to a democratic constitution, is still partly sustainable. Against this view, I wish to underscore two significant departures from the idea that all persons ought to hold equal political power. Both departures were attached to constitutional provisions on office-holding in the federal legislature. The first of these was an explicit restriction of some legislative offices to certain categories of experts nominated by the executive. The second was a more tacit permission to introduce expansive legislative office qualifications through ordinary legislation.

3.1 EXPERT NOMINEES IN THE INDIAN PARLIAMENT

The principle of vesting decision-making power with nominees of the executive had its antecedents in colonial constitutionalism in India. Under successive constitutional reforms until 1935, a large proportion of seats in the federal legislature had been set aside for members nominated by the Governor-General in India. In the Government of India Act 1919, for instance, nearly a third of the seats in the lower chamber, and nearly half the seats in the upper chamber were reserved for the Governor-General's nominees. While these were abolished through the Government of India Act 1935, nominations continued for the representation of princely states.⁴⁰ As such, nominations—whether by the colonial executive or native monarchs—had long held a distinctively undemocratic pedigree and presence in Indian constitutional traditions. The idea that the princely states need not subject themselves to adult suffrage under the new Constitution was criticised in the Assembly even as negotiations over such states' role in independent India were still underway.⁴¹ Ultimately, these negotiations culminated in an agreement whereby adult suffrage, rather than nominations, were established for the selection of representatives from the princely states. In this context, the fact that executive-appointed nominations, a legacy of the colonial machinery, continued, is significant.

⁴⁰ The princely states were nominally sovereign monarchies, which were not directly ruled by the colonial government. Instead, these were governed by their local ruler under a subsidiary alliance agreement with the British government. When the Advisory Committee of the Constituent Assembly first met, the terms on which the states would be part of the Union of India were still under negotiation, with some contending that imposition on the suffrage in such jurisdictions would antagonise their respective rulers, potentially discouraging them from joining the Indian republic.

⁴¹ Constituent Assembly of India, "Report of the Union Constitution Committee: July 1947," in *The Framing of India's Constitution: Select Documents*, ed., B. Shiva Rao (New Delhi: Universal Law Publishing, 1967[1947]), 2: 251 (Bhimrao Ramji Ambedkar); Also see *CAD* 4: 889–91, 25 July 1947 (Mahavir Tyagi and Hussain Imam).

The Constituent Assembly incorporated a provision on nominations, requiring the selection of experts from a narrow range of fields, by the executive, to serve as legislators. I argue that expertise in the domains listed by the constitutional provision on nominations was seen as a proxy for competence in law-making. Such experts' presence in Parliament was viewed as important despite their unwillingness to subject themselves to democratic politics. To see this point more clearly, it is worth examining four proposals in the Constituent Assembly for nominations to the second chamber of the federal Parliament:

- (1) Election of 25 legislators in two stages:
 - (a) The first stage would consist in the nomination of persons to five panels:
 - (i) National language and culture, literature, art, education and other professional interests; (ii) Agriculture and allied interests; (iii) Labour; (iv) Industry and commerce (v) Public administration. Registered associations from these vocations and members of the national assembly were eligible for nominating members for such panels.
 - (b) The second stage would consist in an electoral contest between nominees with the national assembly as the constituency.⁴²
- (2) Nomination of 10 members nominated by the executive in consultation with Universities and scientific bodies.⁴³
- (3) Nomination by the executive of 12 members who have 'special knowledge or practical experience in respect of such matters as literature, science, art and social service'.
- (4) Nomination by the executive of 3 members to assist and advise Parliament on specific bills.⁴⁴

3.1.1 Nominations and the Question of Competence

I begin by discussing the Assembly's adoption of the third provision over the first and second, before then examining the fourth proposal. The first draft provision tried to establish nomination through vocational panels, which mirrored those found in the upper house for the Irish legislature. This proposal was later dropped after the Constitutional Advisor, Benegal Narsing Rau, was advised during his visit to Ireland

⁴² Benegal Narsing Rau, "Draft Constitution by the Constitutional Adviser [1947]," in *The Framing of India's Constitution: Select Documents*, ed. B. Shiva Rao (New Delhi: Universal Law Publishing, 1967), 3: 22.

⁴³ CAD 4: 928, 28 July 1947 (N. Gopalaswami Ayyangar/Member for Madras).

⁴⁴ CAD 8: 82, 18 May 1949 (Bhimrao Ramji Ambedkar).

that this mechanism had posed several problems there.⁴⁵ The Assembly's decision to adopt the third proposal represented a contraction in the leeway afforded to nominated members in some respects. The number of nominees dropped from twenty-five to twelve. Further, proposal (2) required the President to consult with scientific bodies and universities in nominating members to the upper house. This requirement was removed after objections that expertise relevant to legislative affairs could exist outside such formal institutions.⁴⁶

One might argue that the Constituent Assembly's adoption of nominations should not be treated as an epistocratic measure. Rather, it ought to be treated as an attempt to rectify shortcomings of *representation*, rather than epistemic capacity. Here, representation is understood as valuable for non-epistemic reasons, like providing persons with the ability for self-governance (whether or not they do so in an epistemically optimal way). On this reading, nominations from experts in certain fields is merely a way of ensuring that members of those domains are not left unrepresented due to their numbers, and instead find a voice in decision-making. Nominees' expertise in the defined fields does not give them any privileged claim to wider competence with respect to legislation relative to any other set of individuals.

However, this reading seems suspect once we take a closer look at the Constituent Assembly's take on such representation. The notion that groups of persons with distinctive interests required separate representation faced strong criticism by a large majority of the assembly. Rochana Bajpai has argued that legislative quotas for groups were seen as antithetical to national unity.⁴⁷ They would entrench divisions between persons, preventing the development of a common national community. This conception of national unity, in turn, affected a range of other concepts, including democracy, which were then conceived in ways that militated against the political representation of groups. As a result of the Assembly's dominant conception of national unity, democracy was viewed in individualist terms, with 'one person, one vote' in territorial constituencies as its essence. Even where legislative quotas were incorporated, as in the case of certain castes and tribes, these were limited in important ways. These quotas were intended only as temporary measures and were geared towards the rectification of social and economic injustices which those castes and tribes faced.⁴⁸ In other words, the manner in which such quotas were defended could not ground the case for the permanent representation of groups—such as those mentioned in the nomination provision—which did not face social and economic deprivation. Significantly, Bajpai notes that the precise mechanism through which temporary legislative quotas for disadvantaged groups would enhance their condition was left unspecified:

⁴⁵ *Ibid.*, 83.

⁴⁶ *CAD* 4: 1029–30, 31 July 1947 (N. Gopalaswami Ayyangar).

⁴⁷ Bajpai, *Debating Difference*, 88–96.

⁴⁸ *Ibid.*, 116–28.

There was, for instance, little recognition in nationalist arguments that on account of being historically marginalized, these groups had a distinctive perspective on matters of public policy which merited representation, or that members of these groups were in a better position to understand their first-hand experience, better trust and communication with group members.⁴⁹

Examining reasons offered for the provision on nomination also confirms the idea that this was meant as a device for by-passing the ordinary electoral process in order to secure epistemically superior persons as legislators. Proponents of this provision insisted that it offered safe passage into Parliament for experts who would feel ‘shy’ in contesting elections.⁵⁰ Naziruddin Ahmad (member for West Bengal) put this explicitly when he defended nominations on the grounds that:

It may be that at any future election we may lose Dr. Ambedkar himself, and there should be some means of bringing him in by a presidential nomination. Then there is the Rt. Honourable Mr. Jayakar. These are really great men of the Law and their addition, or rather the choice of the President in their selection should be very useful.⁵¹

Finally, a closer look at the constitutional provision on nominations provides further evidence that it was intended to improve the legislature’s epistemic competence, rather than merely improve its representative character. The choice of fields chosen as relevant for overriding the electoral process is crucial. The provision on nominations suggests that knowledge of ‘literature, art, science and social service’ and not, for instance, agriculture, industry or labour, triggers claims for representation. Only particular kinds of knowledge were picked out as relevant in identifying who ought to enjoy privileged status. It is also worth noting that the rejected proposal on vocational panels was more inclusive with respect to the categories for which it demanded representation, encompassing fields such as agriculture and labour.⁵² Further, in the case of categories of persons that were awarded legislative quotas—such as certain backward castes and tribes—the legislators chosen under these safeguards would nevertheless need to prove their popularity among the group they stood for. In the case of literature, art, science and social service, however, members could be appointed without requiring that they undergo any process of elections at all. Even in the case of proposal (1) on vocational panels, nominated persons were required to participate in an electoral contest, with members

⁴⁹ Bajpai, *Debating Difference*, 126.

⁵⁰ *CAD* 7.2: 1220, 3 January 1949 (Rohini Kumar Chaudhari/Member for Assam). Also see *CAD* 4: 927–28, 28 July 1947 (N. Gopalaswami Ayyangar); *CAD* 9.1: 487, 19 August 1949 (Panjabrao Shamrao Deshmukh/Member for the Central Provinces and Berar).

⁵¹ *CAD* 7.2: 1213, January 3, 1949.

⁵² Indeed, the final provision did not provide an exhaustive list of categories for nomination. Rather, the fields mentioned there were illustrative. However, the illustrations did serve to constrain the vocations from which nominated members could be drawn. For instance, it would be hard to argue that the nomination of a farmer was possible under the final provision.

of their respective professions as the constituencies. If representation, rather than expertise were the purpose of nominations, candidates ought to be required to demonstrate that their perspectives were *representative* of those held by others in the fields of literature, art, science and social service. Instead, allowing the executive to appoint members seems to prioritise prominence or excellence over representativeness in those fields as a precondition for serving as a legislator.

3.1.2 The Rationale for ‘Expert’ Legislators

Here, it is briefly worth pausing to reflect on why such experts, unrepresentative though they might have been of the wider population—or indeed, of their own epistemic communities—were seen as necessary ingredients of the legislative process. The Indian Constituent Assembly, as Sandipto Dasgupta has persuasively argued, viewed its role as the establishment of a process of ‘transformative constitutionalism’.⁵³ I have previously indicated that members of the Assembly perceived democratic institutions as an ‘experiment’ given the divergent social conditions that existed in their country compared to those in Europe. Democratic institutions had been grafted ‘on an Indian soil that was essentially undemocratic’.⁵⁴ A pre-industrialised economy and a nation characterised by deeply hierarchical social relations were unconducive conditions for democratic institutions. The task of a constitution, then, was not just to establish the democratic framework, but also to transform society to ensure that a democratic constitution was possible. ‘Planning’ and ‘development’ were key aspects of this task, requiring the constant supervision of a managerial elite.⁵⁵ Transformative constitutionalism leaned on the idea of a fusion between public law and the administrative state. *Special expertise* in literature, art, science and social service served as a proxy for the kind of technical competence that the Assembly wished to harness for the transformation of social conditions. As with Article 171, the expertise introduced by the nominations provisions was perceived far too valuable to leave to the contingencies of electoral politics.⁵⁶

The danger of legislation through judicial litigation was a recurrent theme in the Assembly’s deliberations. This is significant because judges, too, comprised of a type of managerial elite qua specialised bureaucrats. As Dasgupta argues, ‘From the standpoint of administering the process of democratic participation and contestation, coherence and control were crucial values’. Judges, however, made decisions based

⁵³ Sandipto Dasgupta. *Legalizing the Revolution*. (Unpublished Ph.D. Thesis: Columbia University, 2013), 12.

⁵⁴ CAD 7.2: 38, 4 November 1948 (Bhimrao Ramji Ambedkar).

⁵⁵ Sandipto Dasgupta. *Legalizing the Revolution*, 256–63; Sandipto Dasgupta, “‘A Language Which Is Foreign to Us’: Continuities and Anxieties in the Making of the Indian Constitution,” *Comparative Studies of South Asia, Africa and the Middle East* 34, no. 2 (2014): 240.

⁵⁶ Indeed, the Constituent Assembly’s approach on this front was a precursor to the postcolonial Indian state’s, whereby experts in development policy sought to ‘insulate themselves from being buffeted by the turbulent cross-currents of politics and democratic accountability’. Nandini Gooptu, *The Political Legacy of Colonialism in South Asia*, 346.

on particular cases brought before them, threatening to render policies ‘unpredictable and not subject to the deliberate process of formulating and implementing a transformational agenda’.⁵⁷ In other words, the constitutional project envisaged by the Indian Constituent Assembly required not just a set of managerial bureaucrats but also underscored why the appropriate home for this class was the *legislative assembly*. The provision on nominations can, therefore, be viewed as a manifestation of the Assembly’s particular view of the aims of the Constitution, the kind of actors who could achieve those aims, and the institutional settings in which they ought to be placed.

That said, which *kinds* of competence were pressing enough to incorporate in the nominations provision continued to remain a bone of contention in the Constituent Assembly. The constitutional provision on nominations ultimately adopted by the Assembly set aside places for experts in fields such as ‘literature, art, science and social service’. Critics of the provision insisted that it acknowledged only a limited number of fields and that further categories should have been recognised. KT Shah, for instance, insisted that a consultative committee in Parliament ought to comprise, among others, engineers, economists, and experts in forestry.⁵⁸ Jivraj Narayan Mehta (Member for Baroda) suggested that medical experts ought to be included in the nominations provision.⁵⁹ Lok Nath Mishra wished to include, through the same constitutional provision, experts in the ‘History of ancient Indian philosophy and culture’.⁶⁰ Naziruddin Ahmed proposed the inclusion of experts from the fields of journalism, commerce, industries, and law.⁶¹ The Assembly, however, voted down each of these amendments, opting instead for significantly narrower categories of expertise as qualifications for nominated legislators even as critics insisted that there was no principled basis for such enumeration. In sum, even when there was convergence over the need for ‘competent’ legislators, this did not eliminate difference over the kind of expertise that the constitution ought to privilege.

3.1.3 The Power and Scope of ‘Expert’ Legislators

Let me now say more by way of comparison between the final constitutional provision (proposal 2 above) and the third proposal. I reproduce these here for our convenience:

⁵⁷ Sandipto Dasgupta, *Constitution as Administrative Design: Notes on Parliamentarism and Fundamental Rights in the Indian Constitution*, 21. Paper Presented at the Seminar on South Asian Political Thought, University of Oxford, 5 June 2017.

⁵⁸ CAD 7.2: 1209, 3 January 1949.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, 1211.

⁶¹ *Ibid.*, 1212.

(2) Nomination by the executive of 12 members who have ‘special knowledge or practical experience in respect of such matters as literature, science, art and social service’.

(3) Nomination by the executive of 3 members to assist and advise Parliament on specific bills.⁶²

We can distinguish two dimensions along which the contribution of actors to legislative discussion might vary. Firstly, the legislative role of agents varies in the *scope of decisions* upon which their preferences are considered. Their role may be restricted, for instance, to providing inputs on proposed legislation where the vital interests of their group are affected. On the other hand, they may be given a wider mandate of participating on all issues that lie within the ambit of the assembly. Secondly, the legislative role afforded to political agents might vary on the dimension of *weight afforded to their preferences*. Political players might be given a veto, vote or rights to be consulted on matters. The *veto* might be restricted to particular matters, as when minority representatives are given the right to reject proposed legislation that affects their vital interests. On the other hand, a presidential veto is not restricted to legislation that covers only a particular set of subjects. *Rights to consultation* might again be specific to some subject, or general. As an example of the latter, consider the British monarch’s right to be consulted, as well as aid and advise ministers. However, rights to consultation might be limited, as when a group must be asked for its views when a proposed policy is likely to affect its interests. The *vote* is a weaker mechanism than a veto since a political agent shares power with other agents, and cannot herself determine the decision. But it is stronger than mere rights to consultation where she can only try and influence primary agents whose vote or veto determines the outcome.

Proposal (4) had proposed permitting the executive to nominate three members whose role would be restricted in both scope and weight. Such members would ‘assist and advise the Houses in a particular measure that may be before the House’.⁶³ Their terms were to be ‘co-terminous with the proceedings with regard to a particular Bill in relation to which they are nominated by the President to advise and assist the House’.⁶⁴ Further, their contribution was limited to taking ‘part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which they are nominated by the House as a whole or in a particular committee to which they are nominated by the House as members thereof’.⁶⁵ Yet, the final provision adopted by the Assembly expanded the power available to nominated members in both respects.

The constitutional provision on nominations was criticised by various members of the Constituent Assembly for blurring the boundaries between the legislature and

⁶² CAD 8: 82, 18 May 1949 (Bhimrao Ranji Ambedkar).

⁶³ *Ibid.*, 83 18 May 1949 (Bhimrao Ranji Ambedkar)

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

the executive. If the point of the legislature—especially the second chamber—was to serve as a check on the executive, it seemed queer that the executive could unilaterally select persons for this purpose. In other words, the nomination provisions undermined the principle of separation of powers for the maintenance of checks and balances. Crucially, the constitutional provision facilitated a particularly stark blurring of boundaries between the legislature and the executive, by allowing the executive to nominate members to the legislature who could also join the cabinet. Some members criticised this, insisting that nominated members be excluded from serving as ministers.⁶⁶

The above criticism against the incorporation of experts was primarily targeted at the mechanism of *executive* nomination through which they were to be co-opted into the assembly. However, this does not exhaust the possible routes through which unelected experts could be offered a legislative role. Indeed, some of the discarded provisions on nominations could have avoided this criticism to a large extent. Proposal (1) could have circumvented this problem in a limited manner since it (a) vested the power of appointment in the entirety of the elected chamber of Parliament, rather than merely the government, and (b) permitted vocational associations to nominate individuals for such elections. Proposal (4) would also have been consistent with separation of powers by restricting nominated members' influence to the sphere of discussion, rather than providing them a vote on legislation. Finally, although this does not seem to have been proposed in debates over India's Constitution, it is possible to incorporate experts through nomination by an independent commission. Ultimately, critics of the nominations provision did not contest the idea that experts could be co-opted into Parliament even if they lacked popular support. As I have demonstrated, they did not feel the *need* to offer this argument because the content of the nominations provision lent itself to an alternative line of criticism: that it blurred the separation of powers. Consequently, the principle underlying this constitutional provision went largely uncontested even though the specific mechanism it proposed was appropriately criticised.

3.1.4 Expertise in Constitutional Discourse outside the Assembly

It is worth mentioning that the temptation to introduce nominated experts also extended to Indian constitutional discourse outside the Constituent Assembly. Consider, for instance, the proposed constitution drafted by Manabendra Nath Roy, founder of the Communist Party of India. During and after the Assembly's proceedings, Roy remained a persistent critic of its elitist tendencies, lamenting the manner in which it had effectively allocated power to a small group of people, eschewing the kind of grassroots democracy than Gandhian political thought had advocated. Comparing Roy's constitutional proposal with others advanced at that

⁶⁶ *CAD* 7.1: 1146, 30 December 1948 (K.T. Shah); *Ibid.*: 1174, 31 December 1948 (Shibban Lal Saxena).

time, Niraja Jayal Gopal states that his was ‘by far the most populist and radical of these manifestos of the “New India”’.⁶⁷ Even before the Constituent Assembly had been formed, Roy had voiced concerns about popular participation in the formation of a new Constitution. Jayal suggests that ‘he wrestled with the question of how to vest the sovereign power of the Indian people in such a body, and concluded that once power had been transferred by the British Parliament to the Indian people, there was no need to leave the fate of the people in the hands of parties and leaders’.⁶⁸

Indeed, it is true that Roy’s constitution surpassed his contemporaries’ proposals in the degree to which it was open to popular input for the first legislative chamber. In the first instance, it explicitly awarded the right to run for legislative office in this chamber to all citizens above the age of eighteen.⁶⁹ Further, the proposed Constitution gave voters the ability to recall members of the federal assembly.⁷⁰ It is true that this right of recall was vested with an intermediary body, the Peoples’ Committee, rather than directly with the voters. However, these Committees were to be elected annually, giving voters considerable influence over them. Finally, Roy’s proposed constitution also provided for a limited form of referendum on legislative measures.⁷¹ Here, *contra* Jayal, I would urge caution in the radicalness we ascribe to Roy’s incorporation of a provision on referendums. There are two reasons why this was much less radical than it might seem. The referendum was limited to a veto on laws enacted by the federal assembly.⁷² Further, for a matter to be placed before voters for a referendum, two intermediary bodies—provincial peoples’ committees and peoples’ committees—would have to give their successive assent for undertaking this procedure.⁷³

With all caveats in mind, Jayal’s commentary on Roy’s draft constitution is correct in noting that it demonstrated a radical impulse in its aspirations for democratic self-rule by the people. However, this is only part of the story. Things begin to look very different if we turn our attention towards Roy’s proposed design for the second chamber in the federal legislature, the Council of State. Members of this council were to be chosen in the following fashion:

- (a) The following professional groups will nominate panels of ten names belonging to each profession: engineers, economists, scientists, medical men, jurists, historians. The Provincial Governments will appoint two out of each panel as members of the Council of State.

⁶⁷ Niraja Jayal Gopal, *Citizenship and its Discontents* (New Delhi: Oxford University Press, 2013), 143. Chris Bayly, by contrast, classes Roy as a ‘democratic liberal’, a reading which, too, seems suspect in the light of my analysis below. See Bayly, *Recovering Liberties*, 341.

⁶⁸ *Ibid.*

⁶⁹ Manabendra Nath Roy, *Constitution of Free India: A Draft* [1944] (Bengaluru: Centre for Law Research and Policy), paragraph 5, Available at: https://cadindia.clpr.org.in/historical_constitutions.

⁷⁰ *Ibid.*, para. 9.

⁷¹ *Ibid.*

⁷² *Ibid.*, para. 57.

⁷³ *Ibid.*

(b) The Provincial Governments will further appoint two persons from among those who have made outstanding contributions to modern thought in philosophy or the social sciences.

(c) In addition, the Provincial Governments will appoint three civil servants as members of the Council of State.⁷⁴

Roy's proposed second chamber, then, far exceeded its counterpart in the actual Indian Constitution, when it came to the extent to which it restricted legislative office to professionals and academics. It did not merely set aside a fraction of the seats for such persons. Rather, it was composed entirely of putative experts, significantly bypassing the element of popular election in the second chamber.

3.2 QUALIFICATIONS FOR LEGISLATORS IN THE INDIAN PARLIAMENT

I have argued that the incorporation of nominated 'experts' manifested the Assembly's commitment to competence-based restrictions for legislative office. But that is as far as things go. After all, seats for nominated experts formed only a minuscule portion of the legislative set-up. In what follows, I argue that for the most part, the Indian constitution-makers followed an alternative approach, whereby they entrenched universal suffrage while leaving open the possibility for greater restrictions upon elected office.

3.2.1 Legislative Office Qualifications in the Constituent Assembly

Consider four kinds of qualifications for legislators proposed during the Constituent Assembly debates:

- (1) KT Shah (member for Bihar) proposed to disqualify illiterate persons from candidacy for legislative office. 'We have an appalling volume of ignorance in this country—utter illiteracy', he argued.⁷⁵ As a result, there was a 'danger' that the legislature, too, would be populated by illiterate persons.⁷⁶ Shah's argument relied on the notion that illiterate persons were likely to choose similarly illiterate representatives to the legislature. More importantly, it viewed illiteracy as a proxy for ignorance. Mohanlal Gautam (member for the United Provinces) proposed a similar amendment, which he did not formally move, to fix matriculation as a qualification for legislators, rather than Shah's more minimalist criteria of literacy.⁷⁷
- (2) Shah had previously proposed another amendment, which sought to ensure that a legislator had 'served in some public body, or done some form of social work, or otherwise proved his fitness, capacity and suitability for such election

⁷⁴ *Ibid.*, para. 36.

⁷⁵ *CAD* 8: 552, 2 June 1949 (K.T. Shah).

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, 2 June 1949 (Mohanlal Gautam).

or appointment as may be laid down by Parliament by law in that behalf'.⁷⁸ Here, one's public actions and social service, rather than literacy, served as proxies for competence as a legislator. Shah insisted that these functioned as 'more mature, deeper, fuller indices or measures of qualifications' than academic achievement. The latter served as indices 'merely of a good memory rather than of a good character, or a good general outlook on the part of the person concerned'.⁷⁹

- (3) Shah's amendment also sought to ensure that all legislators could, firstly, read, write or express themselves in English; and secondly, read, write or express themselves in Hindi within 10 years from the adoption of the Constitution. Unlike previous qualifications, which were defended as proxies for competent decision-making, these provisions were justified as preconditions for legislators to adequately perform their role. Shah argued that it was crucial that 'some common medium of expression should be used, so that everybody should be in a position to follow and do justice to the remarks'.⁸⁰ Therefore, this set of amendments aimed at securing the necessary conditions for adequate communication between legislators.
- (4) A fourth, and somewhat distinctive, qualification was proposed by Kishorimohan Tripathi (member for the Central Provinces States), who recommended that 'eligibility for election to legislatures should be restricted to such persons as neither pay income-tax nor hold land in excess of 100 acres'.⁸¹ Historically, qualifications with respect to property assumed that greater wealth travelled together with greater competence as a political agent. This qualification inverted the assumption insofar as it viewed the absence of property as more likely to render persons competent. Tripathi argued that such a qualification would bring villagers into the legislature, enabling them to play a role in the democratic process.

Two features of the Assembly's position on qualifications for legislators are worth emphasising. Firstly, its members did not contest the idea that legislators ought to have qualifications of a more stringent standard than those applied to voters. R. R. Diwakar (member for Bombay) argued that 'it is a superstition with western democratic method [sic] that each one who has a vote is also eligible for becoming a candidate'.⁸² Against this notion, Diwakar argued that qualifications for legislators

⁷⁸ CAD 7.1: 1178, 31 December 1948 (K.T. Shah).

⁷⁹ *Ibid.*, 1179.

⁸⁰ *Ibid.*, 1178.

⁸¹ CAD 7.1: 368-69, 9 November 1948 (Kishorimohan Tripathi/Member for the Central Provinces States).

⁸² CAD 7.1: 291, 6 November 1948.

ought to be different from those demanded of voters so that only those ‘who can understand, who can grasp the spirit of the whole Constitution’ serve as elected representatives.⁸³ Similarly, in his comments on higher age qualifications for legislators, Bhimrao Ramji Ambedkar, Chairperson of the Constituent Assembly’s Drafting Committee, argued that:

The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affair of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.⁸⁴

Secondly, even though the Assembly did not vote to establish any educational qualifications for legislators, it did not foreclose this possibility. While responding to Shah’s proposal for a literacy qualification, Ambedkar argued that the matter ought to be left to the legislatures. ‘If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it’, he argued.⁸⁵ This exemplified the Assembly’s position on differentiating between qualifications for legislators and voters. The Constitution specifies that persons are entitled to vote if they meet the age qualification, insofar as they are not ‘otherwise disqualified under this Constitution or any law made by the appropriate Legislature *on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice*’. By contrast, the provision on legislators did not circumscribe any such parameters on which disqualification might be prescribed by Parliament. Thus, the Assembly distinguished between qualifications for voters and legislators, foreclosing the possibility of educational qualifications for the former, while leaving open this possibility for the latter.

3.2.2 Legislative Office Qualifications in the Transitional Legislature

Shah was quick to try and explore the possibility that had been left open to him by the Constituent Assembly even as it had been denied express approval during the making of the Constitution. In February 1950, merely days after the adoption of the Indian Constitution, Shah moved a resolution in India’s transitional Parliament calling for the enactment of qualifications for elections to Parliament and the state legislatures.⁸⁶ In his comments on the resolution, Shah defended the need for restrictions on office similar to those he had defended in the Constituent Assembly. However, unlike last time—perhaps realising the potential intractability of the

⁸³ *Ibid.*

⁸⁴ *CAD* 8: 89, 18 May 1949.

⁸⁵ *CAD* 8: 553, 2 June 1949.

⁸⁶ *PD* 2.1: 401, 9 February 1950

question—he left open the precise nature of the qualifications to be prescribed, suggesting that a legislative committee examine that question.⁸⁷ Another professor in Parliament, Shyam Nandan Prasad Mishra, moved a similar, but more specific, resolution.⁸⁸ Whereas Shah only hinted at the need for an educational qualification, Mishra's proposal made this explicit. In response, Panjabrao Shamrao Deshmukh moved a counter-resolution which would not just reject Shah and Mishra's proposals, but altogether take away Parliament's power of formulating qualifications for legislators in addition to those already specified by the Constitution.⁸⁹

Unlike the last occasion, this round of proposals saw greater debate on the question of educational qualifications for legislative office. As such, deliberations on Shah's new proposal can shed greater light on why such qualifications were seen as necessary. At least two kinds of arguments were offered for some sort of educational restriction on office-holders. First, some suggested that a qualification of this kind served as a *proxy* for the kind of intelligence that law-making required.⁹⁰ Such arguments were met with resistance by those who iterated faith in the 'common sense' of poor but uneducated citizens.⁹¹ However, proponents of educational qualifications argued, legislating was a complex task, and placed greater requirements on those involved compared to ordinary voters. On this account, the task facing the Indian political elite had presently changed compared to the one it performed during the anti-imperialist movement. Then, its role was restricted to sloganeering and mass-mobilisation. Now, the political elite was responsible for governance, which required 'specialised knowledge in economics, politics, sociology and so forth'.⁹² A second line of argument suggested that a qualification of this kind was a *precondition* for intelligible communication between legislators. If each legislator spoke only his or her regional language, then Parliament would begin to resemble the 'tower of Babel', precluding deliberation between its members.⁹³

Despite pockets of support, both proposals for restricting office faced considerable opposition within the transitional Parliament. Critics argued, first, that such restrictions were inconsistent with democratic principles. The decision to opt for universal adult suffrage had been underpinned by trust in the abilities of the voter. To now try and restrain voters' choices would entail going back on that decision.⁹⁴ Although such critics saw this as an inconsistency, I have argued that proponents of

⁸⁷ *Ibid.*, 402. Also see *PD* 2.4: 2502, 4 April 1950 (K. T. Shah).

⁸⁸ *Ibid.*, 2506.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, 2512 (Shyam Nandan Prasad Mishra); *Ibid.*, 2531 (Basanta Kumar Das/Member for West Bengal)

⁹¹ *Ibid.*, 2517 (Panjabrao Shamrao Deshmukh)

⁹² *Ibid.*, 2538 (K. K. Bhattacharya/Member for Uttar Pradesh); *Ibid.*, 2504 (K.T. Shah); *Ibid.*, 2510 (S.N. Mishra)

⁹³ *Ibid.*, 2539 (Sardar Sochet Singh/Member for Patiala and East Punjab States Union); *Ibid.*, 2541 (Hossain Imam/Member for Bihar)

⁹⁴ *Ibid.*, 2535 (Seth Govind Das/Member for Madras); *Ibid.*, 2529 (Bali Ram Bhagat/ Member for Bihar); *PD* 2.6: 506, 23 November 1950 (S.N. Das/Member for Bihar).

legislative office qualifications did not view this constraint upon voters as objectionable. For them, precisely because adult suffrage could not be revoked, some other mechanism was necessary for ensuring that only competent actors held ultimate decision-making power. A second set of arguments—most frequently observed—against the use of qualifications insisted that no straightforward way of distinguishing competent from incompetent actors was available.⁹⁵ Some who made this argument even conceded that some sort of qualification for office was indeed attractive.⁹⁶ Yet, their hostility to prescribing one stemmed from the impossibility of identifying an appropriate proxy for the kind of competence required for law-making. Finally, some critics insisted that educational qualifications were particularly unjustified given the unequal distribution of education across different demographic groups. Such restrictions would disproportionately result in the exclusion of the backward castes, indigenous persons and the poor, who had unequal access to formal education.⁹⁷ Since this would harm the interests of such groups of citizens, the Constitution ought to eschew any educational qualification for legislators. Many, including Ambedkar, had been critical of similar restrictions on the franchise for precisely this reason. However, it was unclear why exclusion from office would harm the interests of particular groups if their members could nevertheless exercise influence through the vote. Why was the legislative presence of those groups so important? I shall return to this point in the next section.

The ultimate decision taken by the 1950 Parliament mirrored the one taken by the Constituent Assembly. Members of the Indian Parliament did not accept either Shah or Mishra's proposal to incorporate further qualifications for legislators.⁹⁸ At the same time, by also not accepting Deshmukh's proposal, they retained Parliament's ability to formulate such restrictions in the future.⁹⁹ The founding moment of the Indian republic, then, demonstrated a strategy quite different from that chosen by the constitution-makers in the United States. The latter strictly regulated qualifications for office but permitted restrictions upon the franchise. On the other hand, framers of the Indian constitution were careful to entrench the franchise in the constitution, limiting the categories around which disqualifications could be prescribed. But they were less protective of legislative office, awarding Parliament discretion with respect to the formulation of restrictions, including educational qualifications.

⁹⁵ Giani Gurmukh Singh Musafir, for instance, argued that there was no standard by which we could assess one's competence as a legislator: 'we cannot judge it nor can we investigate it. Because no definite standard can be laid down'. *Ibid.*, 497 (Giani Gurmukh Singh Musafir/Member for East Punjab); *Ibid.*, 490 (Chandrashankar Manishankar Bhatt/Member for Bombay); *Ibid.*, 517 (Harekrushna Mahatab/Member for Orissa and Minister of Industry and Supply), *Ibid.*, 520–21 (O. V. Alagesan/Member for Madras)

⁹⁶ *Ibid.*, 539 (Bhimrao Ramji Ambedkar).

⁹⁷ *Ibid.*, 509 (Karunakara Menon/Member for Madras); *Ibid.*, 515 (Reshamlal Jangde/Member for Madhya Pradesh)

⁹⁸ *Ibid.*, 541.

⁹⁹ *Ibid.*

4. The Curious Case of Ambedkar's Stand on Legislative Office Qualifications

It is worth subjecting Ambedkar's views on legislative office qualifications to greater examination. For those familiar with his views on representation, his opposition to entrenching strict restrictions on office-holding is, at the face of it, curious. After all, in previous constitutional debates, leading up to the Government of India Acts of 1919 and 1935, Ambedkar had steadfastly opposed educational qualifications for the franchise, citing the disproportionate impact this would have on the 'Untouchable' community. He had insisted that their exclusion from the electorate through such qualifications would harm their ability to elect representatives of their choice. Further, he insisted, like several proponents of the second reform act, that political power, in the form of the suffrage, was, in fact, a vehicle for securing access to education for the Untouchables:

Granting that the extension of franchise must follow the removal of illiteracy what guarantee is there that efforts will be made to remove illiteracy as early as possible? The question of education like other nation-building questions is ultimately a question of money. So long as money is not forthcoming in sufficient amount, there can be no advance in education. How to find this money is therefore the one question that has to be solved. That a Council elected on the present franchise will never be in a position to solve the problem is beyond dispute. For the simple reason that money for education can only be provided by taxing the rich and the rich are the people who control the present Council. Surely the rich will not consent to tax themselves for the benefit of the poor unless they are compelled to do so. Such a compulsion can only come by a radical change in the composition of the Council which will give the poor and illiterate adequate voice therein. Unless this happens the question of illiteracy will never be solved.¹⁰⁰

Note, moreover, his insistence that 'the right of representation and the right to hold office under the State are the two most important rights that make up citizenship'.¹⁰¹ Indeed, the statement was not an isolated one but was embedded in his long-standing campaign for securing the descriptive representation of the formerly untouchable community. Ambedkar had, since the 1920s, advocated the descriptive representation of Untouchables in the legislature, through a system of separate constituencies for the community's voters. This had put him at loggerheads with the Indian National Congress, and, most famously, with Gandhi, who steadfastly

¹⁰⁰ Bhimrao Ramji Ambedkar. "Report on the Constitution of the Government of Bombay Presidency," in *Dr. Babasaheb Ambedkar: Writings and Speeches* (Bombay: Education Department, 1982), 2: 340.

¹⁰¹ Bhimrao Ramji Ambedkar, "Evidence before the Southborough Committee [1919]," in *Writings and Speeches* 1: 256.

opposed separate constituencies on the grounds that these would deepen fissures between Untouchables and caste Hindus. Ambedkar's persistence on the question of reserved legislative seats for the Untouchables continued well into the negotiations of the Constituent Assembly, at one point leading him to threaten a walk-out when such guarantees were withdrawn from the draft of the Constitution. How then, was a political leader committed to the representation of Untouchable politicians, not more strongly opposed to educational qualifications, when he fully understood how such restrictions would disproportionately affect candidates from his community?

It is worth noting that Ambedkar's differing attitude to qualifications for the vote and legislative office were not anomalous concessions that he made to his colleagues in the Constituent Assembly. Rather, he placed the two on different planes even in his proposed draft constitution, which was significantly less constrained by the prevalent discourse of the Assembly's proceedings. Consider the following provisions from the draft:

- No citizen shall be disqualified to hold any public office or exercise any trade or calling by reason of his or her religion, caste, creed, sex or social status.¹⁰²
- The right of a citizen to vote shall not be denied or abridged on any account other than immaturity, imprisonment and insanity.¹⁰³

In what follows, I argue that Ambedkar's views on descriptive representation offer, at once, an explanation for why his attitude towards the right to vote differed from his perspective on the right to hold office (Section 4.2), and a potential argument for why legislative office must, too, be open to all regardless of education (Section 4.1).

4.1 AMBEDKAR'S CASE FOR DESCRIPTIVE REPRESENTATION

Why was the descriptive representation of Untouchables of paramount importance for Ambedkar? What political function did the presence of Untouchable legislators perform in his view? There are at least two strands of arguments one finds in his writings on the subject. The first focused on its benefit for the pursuit of Untouchables' interests in Parliament, while the second highlight the influence of descriptive representation on wider social interactions outside Parliament.

According to the first line of argument, the presence of a substantial number of Untouchable legislators would enhance engagement with their community's interests. This argument emphasised the significance of ensuring an appropriate *balance of legislative power* between socially advantaged communities and the disempowered. Describing the legislature as 'a battle ground for the acquisition of rights, the destruction of privileges and the prevention of injustice', Ambedkar insisted that

¹⁰² Bhimrao Ramji Ambedkar, "States and Minorities [1946]," in *Writings and Speeches* 1: 392.

¹⁰³ *Ibid.*, 393.

untouchables' interests would be protected only if they had adequate 'weightage' in the assembly: 'Unless the representation of minorities is intended to provide political fun the theory of representation according to population must be discarded and some increase of representation beyond their population ratio must be conceded to them by way of weightage', he argued.¹⁰⁴

This argument took two further forms. In his more pessimistic assessment, Ambedkar's argument for boosted weightage for Untouchables was underpinned by a high level of *distrust towards the motives* of the dominant, Brahminical class. On this account, the ruling class had not adequately exercised its intellectual abilities but had used these to advance its own interests. Commenting on the behaviour of Brahmins in power, Ambedkar stated: 'They have never utilised their intellectual powers to the services of the lower classes...they have always despised, disregarded and disowned the masses in belonging to a different strata, if not to a different race than themselves'.¹⁰⁵ The legislature was, therefore a battlefield for securing interests, and guaranteed representation which, when adequate, would ensure that the Untouchables had sufficient power in political conflicts.

But the need for a balance of power also emerged, not just from self-seeking behaviour on behalf of the ruling classes, but also their lack of *understanding* of the interests of the disadvantaged. Political action was not just a matter of mechanical calculation, and weighing of interests. Rather, it involved 'feelings of sympathy for some and antipathy for others'.¹⁰⁶ In this respect, an Untouchable legislator had an advantage over the 'best man' chosen from the Hindu community. Brahmin leaders, on the other hand, were 'too busy or too prosperous', 'too much self-contained and self-satisfied', such that their conception of social progress was never 'more than a passing thought of a rare moment'.¹⁰⁷ Unlike Untouchable leaders, they were not constantly reminded of adversity and the need for social change.¹⁰⁸ The absence of appropriate sympathy and social attitude, then, precluded the possibility that 'outsiders' could properly know the interests of the Untouchable community.

Could the representation of Untouchable interests not be secured by ensuring that they enjoyed adequate electoral power? Why insist on the presence of Untouchable *legislators* rather than attempting to secure the responsiveness of legislators—regardless of their community—to Untouchable *voters*? Presumably, once such responsiveness was secured, legislators could be led by strategic imperatives to adopt the kind of attitudes or sympathies Ambedkar viewed as necessary for the protection of Untouchables' interests. Ambedkar was insistent, though, that an

¹⁰⁴ Bhimraj Ramji Ambedkar, "Report on the Constitution of the Government of Bombay Presidency [1929]," in: *Writings and Speeches* 2: 362.

¹⁰⁵ *Ibid.*, 349.

¹⁰⁶ Bhimrao Ramji Ambedkar, "What Congress and Gandhi Have Done to Untouchables [1945]," in *Writings and Speeches* 9: 230.

¹⁰⁷ Ambedkar, "Report on The Constitution of the Government of Bombay Presidency," 350.

¹⁰⁸ *Ibid.*, 349–50.

adequate scheme of safeguards for Untouchables must include, both, weighted votes for the community's voters, and guaranteed representation for its legislators. The relevant consideration in this respect was the social disadvantage faced by the community. Because of such disadvantage, even if Untouchables' votes were given appropriate weight, enabling them to play a pivotal role in the election of legislators, Hindu politicians would ultimately prevail:

The gradation of castes produces a certain theological basis which cuts the untouchables both ways: in the minds of the lower orders, it creates a preference for the higher orders while it creates a contempt for the lower orders in the minds of the higher orders. Thus the ascending scale of preference and the descending scale of hatred and contempt beggars the untouchables both ways.¹⁰⁹

In other words, social hierarchies within which Untouchables were situated meant that they had internalised their own inferiority, producing a preference for Brahmin legislators. This was exacerbated by the negative view that Brahmin voters had towards the Untouchables, also making the electoral success of Untouchable politicians less likely. As such, it was insufficient to rely on Untouchable voters to elect members of their own community, a defect that could only be remedied by entrenching quotas in the legislative assembly.

Ambedkar's second defence of descriptive representation, *the endosmosis argument*, focused on the impact of Untouchable legislators for social relations outside the narrow forum of parliamentary politics. The significance of endosmosis stemmed from Ambedkar's diagnosis of a pathological social condition, whereby communication between the privileged and marginalised classes was inadequate. The privileged functioned like a 'close corporation', whose 'social outlook remain[ed] unbroken', rendering it anti-social.¹¹⁰ It was important for democratic citizens to cultivate shared attitudes, but this project was vitiated by the silo-like existence which the caste system had perpetrated in India. In this context, a political system could work successfully only if it altered the terms of social intercourse, enabling greater, and more equitable, communication between hierarchically arranged groups.

The idea of social endosmosis was closely related to the value of fraternity. For Ambedkar, Fraternity, properly understood, meant that 'there should be varied and free points of contact with other modes of association'.¹¹¹ Reproducing Dewey verbatim, Ambedkar suggested that democracy was not just a mode of government. Rather, it was 'a mode of associated living, of conjoint *communicated experience*' (emphasis mine). Social endosmosis could produce fraternity by inculcating 'an

¹⁰⁹ Ambedkar, "Evidence before the Southborough Committee [1919]," 256–57.

¹¹⁰ Bhimrao Ranji Ambedkar, "What Congress and Gandhi Have Done to Untouchables [1945]," in *Dr. Babasaheb Ambedkar: Writings and Speeches* 9: 481–82.

¹¹¹ Bhimrao Ranji Ambedkar, "Annihilation of Caste [1936]," in *Dr. Babasaheb Ambedkar: Writings and Speeches*, 1: 57.

attitude of respect and reverence towards fellowmen'.¹¹² Political institutions that ensured the participation of Untouchables could ensure the development of fraternity, and the weakening of exclusionary communicative practices. Reserved seats for Untouchables would 'bring together men from diverse castes who would not otherwise be mixed together into the Legislative Council'.¹¹³ Such fraternal social interaction would not, however, remain restricted to the floor of the legislature. Rather, it would percolate down into wider society, fostering an endosmosis between citizens from different groups:

The Legislative Council will thus become a new cycle of participation in which the representatives of various castes who were erstwhile isolated and therefore anti-social will be thrown into an associated life. An active participation in an associated life, in its turn, will not leave unaffected the dispositions and attitudes of those who participate.... The existing set attitude representing the diverse castes and groups will be dissolved only if the diverse groups meet together and take part in a common activity.... Such changes of disposition and attitudes will not be ephemeral but will, in their turn influence associated life outside the Council Hall.¹¹⁴

4.2 *AMBEDKAR'S DILEMMA: QUOTAS AND QUALIFICATIONS FOR OFFICE*

It would seem, from the above analysis, that Ambedkar's writings and speeches point against educational qualifications that would disproportionately affect disadvantaged social groups, and undermine the descriptive representation that he strongly valued. If, as Ambedkar argued, the legislative presence of such groups is so significant, then we would be misguided in undermining this through educational qualifications.

Why, then, did Ambedkar not protest legislative office qualifications on similar grounds despite his insistence on the descriptive representation of Untouchables? After all, through its disparate impact on Untouchable leaders, such qualifications could harm the very cause of descriptive representation that he had championed for so long. The key perhaps lies in Ambedkar's insistence that there was no 'right to represent' even though there was a justified 'right to representation':

Indeed, there is no reason why the implications of the representative function should not define the condition of assuming it. It would be no invasion of the right to be elected to the Legislature to make it depend, for example, upon a number of years' service on a local authority and to rule out all those who do not fulfil that condition. It

¹¹² *Ibid.*

¹¹³ Ambedkar, "Evidence before the Southborough Committee," 266.

¹¹⁴ Ambedkar, "Evidence before the Southborough Committee," 256–57.

would be perfectly legitimate to hold that that service in a legislative assembly is so important in its results, that proof of aptitude and experience must be offered before the claim to represent can be admitted. *The argument for restricting the rights, of the higher classes to represent the lower classes follows the same line* (emphasis mine). Only it makes a certain social attitude as a condition precedent to the recognition of the right to represent. Nor can it be said that such a requirement is unnecessary. For aptitude and experience are not more important than the social attitude of a candidate towards the mass of men whom he wishes to represent.¹¹⁵

In the above statement, Ambedkar outlines at least three kinds of qualifications that could in his view justifiably be imposed on the right to hold office: (1) proof of aptitude (2) proof of prior legislative experience and (3) proof of appropriate social attitude. The third of these was pivotal to making room for descriptive representation of Untouchable legislators, insisting that Hindus could justifiably be excluded from some share of legislative seats because they lacked the appropriate social attitude necessary to secure Untouchables' interests. As such, opposition to an unqualified right to represent was an important conceptual move involved in Ambedkar's call for constitutionally established legislative quotas for a disadvantaged group. Once the right to hold office was qualified for the sake of descriptive representation, it would appear other kinds of restrictions could also be permitted. What Ambedkar may have failed to consider, however, was that restrictions (1) and (2) did not 'follow the same' line as (3). In Chapter 6, I examine whether there is a way of distinguishing the kind of qualifications Ambedkar had in mind, aimed at reserving certain legislative seats for Untouchables, from other restrictions of office, such as educational qualifications. It is possible that his eagerness to secure the former left him unable to adequately oppose the latter; but that a theoretically sound alternative is, in fact, available. I argue that it is, *contra* Ambedkar, possible to make a principled distinction between permissible restrictions on office that reserve certain places for disadvantaged groups, and impermissible restrictions aimed at securing competent individuals.

5. Conclusion

I have tried to demonstrate that the Indian Constituent Assembly's break from the colonial past, and suspicions about peoples' capacity for democratic citizenship, was not as clear as some have suggested. Nervousness about the democratic 'experiment' meant that the founders tried their best to institute what they viewed as necessary precautionary measures. These measures were aimed at ensuring that competent persons held legislative office even if this meant bypassing the ordinary democratic process. While some of their attempts were manifested in explicit transfers of some

¹¹⁵ Ambedkar, "Report on The Constitution of the Government of Bombay Presidency," 348-49.

share of legislative power to putatively competent persons, another was evident in their permissibility towards such transfer.

The Indian constitution-makers, too, despite convergence on the need for ‘expert’ legislators struggled to delineate what such expertise involved. They put forward a range of fields, ranging from medicine to philosophy, expertise in which warranted privileged status through the nominations provision. Further, when it came to educational qualifications, many insisted that no irrefutable line between competent and incompetent legislators could be fixed and that it was not possible to constitutionally prescribe any such restriction. Nevertheless, they permitted future parliaments to take up this challenge and refused to prohibit the adoption of competence-based legislative office qualifications.

In Chapter 6, I respond to Ranganath Ramachandra Diwakar’s challenge that the equivalence between eligibility for suffrage and legislative office is a ‘superstition’. Indeed, as I suggest, arguments against competence-based qualifications for the former do not apply in any straightforward way to similar qualifications for legislators. We can, nevertheless, insist that there are good grounds for eschewing epistemic qualifications for legislative office. In doing so, I draw on Ambedkar’s grounds for the salience of the legislative presence of disadvantaged social groups. I follow his insistence on considering the social impact of rules governing inclusion in the legislative domain and argue that the exclusion of disadvantaged groups is likely to foster the negative communicative effects that worried Ambedkar.

4

Indirect Elections: Filtering the Competent into The United States Senate

The final chapter in this part of the thesis highlights the use of indirect elections as a constitutional mechanism for privileging purportedly competent individuals in the legislative process. I examine the use of indirect elections to the American Senate, whereby Senators were selected through state legislators who, in turn, were elected by voters. I begin by offering an overview of the scholarship on the design of America's legislative branch. I argue that existing commentaries on this subject either gloss over the use of indirect elections to the Senate or fail to give it serious theoretical attention. The second section looks closely at the arguments underlying the establishment of a bicameral legislature in America. It suggests that part of the rationale for a second chamber lay in the need for a body of select men, more competent than their directly elected counterparts. However, there were other theoretical considerations behind the adoption of bicameralism. The framers of the American Constitution also valued two chambers for further reasons, which, too, aimed at enhancing the quality of legislation but without the kind of exclusion that indirect elections entailed. The third section discusses why indirect elections were valued for their ability to select more competent legislators. Further, this section briefly examines critics of indirect elections at the Philadelphia Convention, but also during debates over the Seventeenth Amendment, through which such elections were ultimately discarded in America. The fourth and final section of this chapter looks at the adoption of indirect elections in the Indian Constitution, which was influenced by, both, British and American constitutional thought.

1. Debates on the Making of America's Constitution

The design of the legislative branch became one of the most contentious issues facing framers of the American Constitution, at one point threatening to jeopardise the Philadelphia Convention. Debate over the legislature focused on size of the assembly, term limits of its members, rotation, manner of selection, and, above, all the apportionment of members with respect to the states. Of these, the question of

apportionment has perhaps received most attention, with the so-called ‘Great Compromise’ at the heart of much commentary on the American Constitution.¹

Some commentaries on the design of America’s legislative branch tend to altogether gloss over the salience of indirect elections. Such scholarship attempts to underscore the American Constitution’s putative emphasis on popular judgment. Bernard Manin, for instance, argues that the American Constitution, unlike its French and British counterparts, did not commit itself to what he calls the ‘principle of distinction’.² According to this principle, ‘elected representatives would and should be distinguished citizens, socially different from those who elected them. Manin argues that this principle entailed the practice whereby the ‘elected would be of a higher social standing than the elector’.³ In Britain and France, this was enforced through legal means, by distinguishing the qualifications of electors from those of the elected. In America, however, the framers of the Constitution adopted no such qualifications. They eschewed the constitutional entrenchment of hierarchies in their approach to political representation. Similarly, Larry Kramer insists that the vast majority of the framers of the American Constitution were wedded to a model of popular constitutionalism.⁴ His work attempts to push back against the view that America’s constitution-makers were suspicious of ordinary citizens’ political capacities and instead placed their faith in unelected judges as guardians of the Constitution. Kramer argues that America’s founding figures were indeed concerned that all legislative action must abide by a ‘fundamental law’.⁵ Nonetheless, adherence to core constitutional tenets was a matter for popular judgment, through the operation of political institutions. His account, therefore, attempts to excavate the radical popular impulse of the American Constitution, rejecting the notion that it attempted to transfer power away from peoples’ elected representatives.

Accounts like Manin’s and Kramer’s pay insufficient attention to anxieties about popular rule that underwrote the incorporation of indirect elections to the Senate. They are right in emphasising that the Constitution did not formally enact qualifications for legislators, or explicitly transfer power away from the legislature.

¹ See, for instance Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation* (University of Chicago Press, 1999); Jack N. Rakove, “The Great Compromise: Ideas, Interests, and the Politics of Constitution Making,” *The William and Mary Quarterly* 44, no. 3 (1987): 424–57; Stephen J. Wayne, G. Calvin Mackenzie, David M. O’Brien, and Richard L. Cole, *The Politics of American Government: Foundations, Participation, and Institutions* (New York: St. Martin’s Press, 1995), 38.

² Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), 94.

³ *Ibid.*

⁴ Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford: Oxford University Press, 2004), 73–92.

⁵ Kramer suggests that this was synonymous with what we think of today as constitutional law. It referred to ‘a body of immutable principles beyond the reach of any institution of government’. *Ibid.*, 23

Such commentaries, though, fail to adequately appreciate ways in which the design of the American Senate did, in fact, attempt to untether legislative decisions from popular preferences and transfer legislative power to a select body of men, supposedly distinguished for their superior judgment.

Other scholars have been much less sanguine about the American constitution-makers' commitment to popular judgment. This strand of scholarship, far more attentive to the presence of indirect elections to the Senate, has emphasised the influence of British constitutional thought on the United States Constitution. On this account, many individuals involved in the formation of the American Constitution believed that there existed a 'natural aristocracy', which ought to have a strengthened role in the country's political institutions.⁶ Natural aristocrats were individuals who, like the Lords, stood above others by virtue of their wealth and talents. So, as I demonstrate shortly, personal wealth and legislative competence were closely linked under this vision. The Senate would serve as the American counterpart of the British House of Lords, housing this superior class of politicians. Indirect elections were pivotal in ensuring that the Senate approximated the British House of Lords in this respect. As Tench Coxe, delegate of Pennsylvania to the Continental Congress, argued:

[T]he federal Senate are the representatives of the sovereignties of their respective states. A second branch, thus constituted, is a novelty in the history of the world. Instead of a hereditary upper house, the American Confederacy has created a body, the temporary representatives of their component sovereignties, dignified only by their being the immediate delegates and guardians of sovereign states selected from the body of the people for that purpose, and for no reasons, but their possessing the qualifications necessary for their station. We find then in this body, none of the evils of aristocracy apprehended by those who have drawn their reasonings from an erroneous comparison with the upper house of Britain, and all the benefits of a second branch, without hazarding the rights of the people in the smallest particular.⁷

While this appropriately emphasises the British influence on the American Constitution, it tends to reduce the Senate to nothing more than a crude imitation; the best approximation the Americans could achieve in the absence of the kind of aristocratic class found in Britain. It fails to examine *why* the Americans believed that this specific approximation could serve the aim of enhancing the quality of decision-

⁶ Elaine K. Swift, "The Making of an American House of Lords: The U.S. Senate in the Constitutional Convention of 1787," *Studies in American Political Development* 7, no. 2 (1993): 177–224; Paul D. Ellenbogen, "Another Explanation for the Senate: The Anti-Federalists, John Adams, and the Natural Aristocracy," *Polity* 29, no. 2 (1996): 247–71; Michael J. Klarman, *The Framers' Coup: The Making of the United States Constitution* (Oxford: Oxford University Press, 2016), 210.

⁷ Tench Coxe, "A Democratic Federalist [1787]," in *Friends of the Constitution: Writings of the "Other" Federalists, 1787-1788*, ed. Colleen A. Sheehan and Gary L. McDowell (Indianapolis: Liberty Fund, 1998), 352.

makers in the Senate. To put this another way, the ‘Lords-like Senate’ accounts justifiably claim that the design of the Senate was guided by the aim of ensuring better legislators in the second chamber. But they do not try and understand why, according to the American founding figures, indirect elections would, in fact, enable the selection of more able legislators.

That both accounts say little about indirect elections is perhaps unsurprising given the paucity of work on the origins of the Senate. In their seminal work on the subject Daniel Wirls and Stephen Wirls point out that much of the scholarship on the Senate has focused largely on ‘pro forma reviews of the standard facts and elements’ which give ‘short thrift to origins’.⁸ Wirls and Wirls offer rare insight into the complex deliberations, traversing various dimensions, that ultimately resulted in the design of the Senate that the 1787 Constitution established. Their own work, though, pays far less attention to the issue of indirect elections relative to issues such as the size of the assembly and the powers awarded to the Senate. In this chapter, I bring founding debates over the manner of selecting legislators into sharper focus, emphasising the epistocratic dimension that underwrote the Constitution’s incorporation of indirect election of Senators. At the same time, I wish to highlight a further dimension to the role of the Senate in American constitutional design: its role in enhancing the competence of the legislature through institutional means rather than the selection of exogenously competent individuals. In doing so, I argue that an insistence on the Lords-like origins of the Senate elides another, less democratically suspect way, in which the American Constitution sought to enhance the epistemic capacities of Congress.

2. Enhancing Quality through Institutional Design

Rather than a unicameral legislature like the Confederation Congress, members of the Philadelphia Convention chose to establish a bicameral legislative body for the new Constitution. That the United States Congress ought to have two chambers was more or less uncontroversial. Madison’s notes from the convention record the following: ‘that the national Legislature ought to consist of two branches was agreed to without debate or dissent’.⁹ However, the particular modalities of composing the Senate and the power it ought to hold were far less so. In this section, I explore two kinds of arguments for establishing a second legislative chamber: *the second opinion argument*, and the *argument from different institutional features*. Both these defences of the second chamber were similar insofar as they relied not on who would be chosen to the legislature, but on how the quality of the legislative process could be

⁸ Daniel Wirls and Stephen Wirls, *The Invention of the United States Senate* (Baltimore and London: Johns Hopkins University Press, 2004), 4.

⁹ *RFC* 1: 48, 31 May 1787. Madison also records, however, that the only exception was ‘that of Pennsylvania, given probably from complaisance to Doctr. Franklin who was understood to be partial to a single House of Legislation.’

enhanced regardless of its membership. In the next section, I explore the *argument from the selection of competent actors*, which emphasised the need for prioritising the entry of superior decision-makers into the legislature.

2.1 THE SECOND OPINION ARGUMENT

The first argument for a second chamber emphasised the need for two opportunities for detecting error. On this account, the aim of establishing a second chamber was not that it would provide a superior judgment compared to the first. As another representative assembly, constituted of fallible legislators, it, too, could make mistakes. Having two chambers, then, afforded *two opportunities* for detecting errors. This was compatible, like Thomas Jefferson would go on to suggest, with dividing popularly elected legislators into two chambers by drawing lots.¹⁰

Others emphasised a different mechanism through which second opinions could help guard against error. On this account, requiring both houses to pass the same bill injected a degree of delay into the legislative process. This delay could lead to deeper examination of laws. In particular, it could help mitigate the effect of momentary passions, preventing these from getting embedded in the content of laws. This is best instantiated by the fabled conversation between Thomas Jefferson and George Washington—a conversation that would later be narrated in the Indian Constituent Assembly:

It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farrand reports this incident very interestingly: they were taking coffee at breakfast time. Suddenly George Washington asked: "Why, Mr. Jefferson, why are you pouring the coffee into your saucer?" Jefferson replied: "To cool it". Even so, we want to cool legislation by putting it into the saucer of the senatorial Chamber. That is a forceful way of expressing the idea and as we are going to be constituted, it is to check or prevent hasty legislation and not at all to impede progressive legislation. There shall be no mistake about it; the idea is not to check progressive legislation but to have some time so that cool, calm and deliberate conclusions may be arrived at.¹¹

Finally, another argument emphasised the productive benefits of having two chambers, which would compete with each other as 'rivals in duty, rivals in fame, rivals for the good graces of their common constituents'.¹² On this account, the value of having two chambers lay in the 'vigour and alacrity' that would emerge because of

¹⁰ Thomas Jefferson, "Letter to Major John Cartwright [1824]," in *Memoir, Correspondence, and Miscellanies: From the Papers of Thomas Jefferson*, ed. Thomas Jefferson Randolph (Charlottesville, VA: F. Carr, and Company, 1829), 395.

¹¹ CAD 7.2: 1308, 6 January 1949 (L Krishnaswami Bharathi/Member for Madras)

¹² James Wilson, "Lectures on Law [1791]," in *Collected Works of James Wilson*, ed. Kermit L. Hall, and Mark David Hall (Indianapolis: Liberty Fund, 2007), 2: 848.

a healthy rivalry between them.¹³ This rivalry would remain healthy in its direction and aims because both chambers would, ultimately, be accountable to their voters.

2.2 ARGUMENTS FROM DIFFERENT INSTITUTIONAL FEATURES

Although the ‘second opinion’ value of the Senate was certainly part of the thrust behind its establishment, it does not explain all the features of the second chamber in America. A further argument for the second chamber lay in the different institutional features it manifested, and their ability to mitigate deficiencies attached to institutional features of the House of Representatives. Bicameralism could be understood as manifesting a division of labour. Each chamber was constituted in a way that would enhance its epistemic capacities in one way. Yet, that feature also rendered it vulnerable to other kinds of deficits, which a contrary feature in the second chamber was better designed to address. In this section, I focus on two such features: the size of the legislative assembly and the length of its members’ terms. Constitution-makers in America recognised, both, the strengths and weaknesses of a numerically large assembly and shorter terms for legislators. The relatively smaller Senate with a longer term of office, served, in part, as a body designed to mitigate these weaknesses, while allowing the House of Representatives to harness the benefits of a large assembly with a shorter term of office.

2.2.1 Size of the Legislature

Let me begin by discussing the case for a numerically large legislature in debates over the American Constitution. Defenders of a numerous assembly focused on the local information that law-making required. Here, it is worth emphasising what these arguments meant when they focused on local information. Andrew Rehfeld distinguishes between ‘hard’ and ‘soft’ knowledge.¹⁴ Hard knowledge refers to ‘anything that could be written down on paper’.¹⁵ It includes things such as facts about a given constituency’s commercial and agricultural affairs, or the state of its natural resources. Soft knowledge consists in ‘ways of processing information’, often described as a particular group’s perspective. It involves ‘knowledge of how people might react to certain propositions and what they might think of some event’.¹⁶

Part of the argument for a numerically large legislative body relied on representatives’ need for soft knowledge about their constituents. In order to properly appreciate the sentiments and feelings of electors, legislators needed to resemble them in appropriate ways. As the anti-federalist critic, Brutus argued:

The very term representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them -

¹³ *Ibid.*

¹⁴ Andrew Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge: Cambridge University Press, 2005), 26.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 120.

a representation of the people of America, if it be a true one, must be like the people ... They are the sign - the people are the thing signified ... It must then have been intended that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or in other words, should bear the strongest resemblance of those in whose room they are substituted. It is obvious that for an assembly to be a true likeness of the people of any country, they must be considerably numerous.¹⁷

But the argument for a numerous assembly also relied on hard, factual knowledge involved in law-making. It was insufficient for legislators to have ‘acquaintance with the abstruse parts of the system of finance’.¹⁸ To legislate well presupposed ‘knowledge of the circumstances and ability of the people in general – a discernment how the burdens imposed will bear upon the different classes’.¹⁹ It also required understanding and insight into every region affected by legislation: ‘The situation of its commerce, its agriculture, and the system of its resources’.²⁰ It was impossible for a few men from large districts to possess this information. Further, the small size of the legislature would encourage the election of a few select, prominent men. This would leave out the ‘middling classes’ who were most intimately acquainted with the kind of local information legislatures required.²¹ On such grounds, several commentators criticised the Philadelphia Convention’s plan whereby every state would elect two Senators. Others suggested that even the House of Representatives, which would comprise sixty-five members, was far too numerically small to introduce the information relevant for the task of legislating.²²

It is worth noting that epistemic arguments were not the only ones advanced for the cause of a more numerous legislative body. Others also emphasised the role of numerous legislatures in enhancing the confidence of the people in the representative assembly. A more numerous assembly could ensure that legislators would be ‘diffuse[d] more extensively among the body of the people’.²³ This was valuable insofar as it would enhance peoples’ support for laws enacted by them.²⁴ Further, some commentators highlighted the role of larger legislative bodies in resisting corruption. They argued that fewer people were easier to bribe than a larger group of men.²⁵ Their argument did not depend on the collective virtue of a more numerous

¹⁷ Brutus, “Essays of Brutus [1787],” in *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago: University of Chicago Press, 1981), 2: 379–80.

¹⁸ *DSC* 2: 246, 21 June 1788 (Melancton Smith/New York).

¹⁹ *Ibid.*

²⁰ *Ibid.*, 261, 21 June 1788 (Governor Clinton/New York).

²¹ Brutus, “Essays of Brutus [1788],” 380–81; The Impartial Examiner, “Essays by the Impartial Examiner [1788],” in *The Complete Anti-Federalist* 5: 192–93.

²² Centinel, “Letters of Centinel [1787],” in *Ibid.* 2: 142.

²³ The Federal Farmer, “Letters from the Federal Farmer [1788],” in *Ibid.* 1: 281.

²⁴ *Ibid.* Also see *RFC* 1: 568–69, 10 July 1787 (James Madison and George Mason)

²⁵ *DSC* 2: 125, 7 June 1788 (Edmund Randolph/Virginia)

body, but simply the greater obstacles posed in corrupting every individual in such an assembly.

The above arguments played an important role in the adoption of a large legislative assembly in the form of the House of Representatives. Simultaneously, framers of the American Constitution also recognised the value of a numerically small legislature, which was manifested in the size of the Senate. Proponents of a numerically smaller legislative body rejected the suggestion that Congress ought to comprise individuals who possessed information about local circumstances. Some simply denied that there was any such ‘local’ information distinctive to geographical territories in the first place. On this account, different territorial districts did not entail divergence in persons’ interests. There was no separate information that legislators belonging to one district lacked which was available only to persons belonging to another:

...I will presume to affirm, that, from New Hampshire to Georgia, the people of America are as uniform in their interests and manners as those of any established in Europe. This diversity, to the eye of a speculatist, may afford some marks of characteristic discrimination, but cannot form an impediment to the regular operation of those general powers which the Constitution gives to the united government.²⁶

A more prominent objection, however, rejected the idea that Congress needed local information even though there were indeed variations in the circumstances of different regions of the country. This argument was underpinned by the notion that local information was *irrelevant* as well as *inappropriate* for national legislatures. The irrelevance of such information stemmed from the nature of laws enacted by Congress. Alexander Hamilton, for example, argued that in matters of taxation, local knowledge did not entail ‘a minute topographical acquaintance with all the mountains, rivers, streams highways and bypaths in each state’.²⁷ Rather, it required only ‘a general acquaintance with its situation and resources’.²⁸ Whereas local information was indeed relevant for law-making, it was the *state legislatures* that were vested with powers which required such inputs. Legislation at the national level required ‘general knowledge’ pertaining to ‘the interests of the states in relation to each other, and in relation to foreign powers’.²⁹ Congressmen only needed to review legal codes in various states and combine these to form one general act. The knowledge this required was easily available to a small number of decision-makers. Others insisted that local information was inappropriate, not just irrelevant, in the

²⁶ DSC2: 267, 21 June 1788, (Alexander Hamilton/New York).

²⁷ James Madison, “Essay 36 [1788],” in *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), 224.

²⁸ *Ibid.*

²⁹ DSC2: 283, 23 June 1788 (John Jay/New York).

work Congress had been tasked with. On this account, ‘local prejudice’ was seen as potentially detrimental to consensus over common national laws.³⁰

The case for a smaller assembly also stemmed from concerns about the rationality of political decisions. Constitution-makers in America worried that deliberation might be undermined by passions. Nathan Brown appropriately suggests that the founding figures of the American Constitution use the term ‘passion’ in many ways, often coupling it with ‘interest’ and ‘prejudice’. The most consistent use of passion, though, is in juxtaposition to reason.³¹ As Madison argued, ‘it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government’.³² In debates over the ratification in various states, delegates emphasised the dangers of passion, calling for the incorporation of deliberative procedures to provide a ‘calm review of public transactions’. Fisher Ames argued:

A democracy is a volcano, which conceals the fiery materials of its own destruction. These will produce an eruption, and carry desolation in their way. The people always mean right; and, if time is allowed for reflection and information, they will do right. I would not have the first wish, the momentary impulse of the public mind, become law; for it is not always the sense of the people, with whom I admit that all power resides.³³

Some passions were *contingent*, and emerged from the contemporary social and economic environment. Here, the primary threat was that of a spill-over effect. Emotions produced by changes in society, fuelled by occurrences in the economic system, would affect the character of men elected as representatives:

I think that the operation of paper money, and the practice of privateering, have produced a gradual decay of morals; introduced pride, ambition, envy, lust of power; produced a decay of patriotism, and the love of commutative justice; and I am apprehensive these are the invariable concomitants of the luxury in which we are unblestedly involved, almost to our total destruction.³⁴

Similarly, voters in different states were vulnerable to hatred for one another, which would emerge as a result of conflicts for commercial advantages.³⁵ Other passions were more *predictable*, and were attached to numerous bodies. Large assemblies, on this account, were susceptible to mob-like behaviour, and being swept away by passion. Note that this argument did not rely upon the presence of irrationality in

³⁰ *Ibid.*, 302, 24 June 1788 (Alexander Hamilton/New York).

³¹ Nathan J. Brown, “Reason, Interest, Rationality, and Passion in Constitution Drafting,” in *Perspectives on Politics* 6, no. 4 (2008): 678.

³² James Madison, Essay 49, *The Federalist*, 343.

³³ *DSC* 2: 10, 15 January 1788 (Fisher Ames, Massachusetts).

³⁴ *Ibid.*, 30, 21 June 1788 (Charles Turner, Massachusetts).

³⁵ Edmund Randolph, “A Letter of his Excellency, Edmund Randolph Esq., On the Federal Constitution; Addressed to the Honorable Speaker of the House of Delegates, Virginia [1787],” in *DSC* 1: 484.

individuals. Rather, it stressed that even with perfectly rational individuals, large number of decision-makers tend to act contrary to reason, while acting together. ‘Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob’, Madison argued.³⁶

Concerns over passion were closely connected with two further anxieties. The first had to do with the *stability* of the political system. Passions were seen as transient, fuelling fluctuations in legislative decisions. For law to guide action, it had to be known to all and fixed in advance. Shorter legislative terms would result in a multiplication of laws or incoherent legislation. This in turn would make it harder for citizens to assess which laws they were expected to follow. Stability was particularly valuable in the domain of international relations, with which the Senate was tasked. This was because of the reputational costs of an unstable policy. A stable body like the Senate would attract the ‘respect and confidence’ of foreign powers by serving as the ‘offspring of a wise and honorable policy’ rather than an ‘unenlightened and variable’ one.³⁷ Further, instability would also harm America’s domestic interests because even friendly nations would not want to connect their own fortunes to an unsteady partner’s. A second anxiety associated with passions pertained to the *extremity* of decisions that they produced. Madison argued that the executive, rather than the more numerous legislature, ought to be responsible for decisions over petitions for mercy. The latter, more susceptible to passions, would execute either universal vengeance or general mercy.³⁸

2.2.2 Length of Legislative Terms

I now turn to debates over a second feature of legislative design: the length of a legislator’s term. Constitution-makers in the United States emphasised the benefits of longer terms for legislators, ultimately resulting in the adoption of six-year terms for Senators. Debate on the frequency of elections turned, among other things, on the kind of knowledge legislators were expected to have. Those who favoured longer terms for legislators emphasised the demanding nature of legislation at the federal level. Legislators needed to be acquainted not just with their own states, but also with others, as well as America’s foreign relations with other countries. Such accounts argued that Senators ‘should be induced by the permanence of their appointment to devote their time to such studies as may best qualify them for that station’.³⁹

But information-gathering was just one of the dimensions involved in debates over electoral terms. Another argument for biennial elections emphasised the

³⁶ James Madison, “Essay 55” in *The Federalist*, 374.

³⁷ Madison, “Essay 63” in *The Federalist*, 422–23.

³⁸ *DSC* 3: 498, 18 June 1788 (James Madison/Virginia).

³⁹ Carter Braxton, “An Address to the Convention of the Colony and Ancient Dominion of Virginia on the Subject of Government in General, and Recommending a Particular Form to Their Attention [1776],” in *American Political Writings during the Founding Era: 1760-1805*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis, Indiana: Liberty Fund, 1983), 337.

contribution of longer terms to the rationality of decisions. Longer terms ensured that decisions would be taken after due deliberation, having been given a 'sober second thought' and after 'a calm review of public transactions'.⁴⁰ If elections took place too frequently, the momentary impulse of the public mind would become law. Significantly, longer terms would give Senators greater time to persuade their constituents about the appropriateness of their decisions. This meant that legislators would not have to act upon the immediate preferences of voters out of fear for their career. Rather, they could take the time to cultivate adequate support. This account did not obviate the need for Senators to account for their decisions. Their greater wisdom did not give them a warrant to evade justifying their actions. Rather, it only meant they ought to have more time for other, less able constituents to understand the correctness of their far-sighted leaders' conduct:

Public men know, that they may safely wait for the gradual action of a sound public opinion, to decide upon the merit of their actions and measures, before they can be struck down, they will be more ready to assume responsibility, and pretermitt present popularity for future solid reputation.⁴¹

The framers of the American Constitution also recognised, nonetheless, the value of shorter terms for legislators, adopting biennial elections for House Representatives. Proponents of this view insisted that the primary knowledge a legislator required pertained to local interests. For all other kinds of knowledge, such as the circumstances obtaining in different states, a legislator could study relevant documents rather than having to personally meet voters there. Since the epistemic task their role involved was a local one, they ought to be subject to frequent elections. The call for shorter legislative terms was not only restricted to the House of Representatives. Rather, some even insisted that the Senate, too, should be subject to more frequent elections. Residing in the national capital for long durations would render Senators less informed about the interests of constituents in their own states. Thus, the argument went, a Senator should not have an unduly long term, so that he can continue to engage with voters from his state, and obtain adequate insight from them about their circumstances and interests. Eventually, however, senators were awarded six-year terms, while House representatives were subject to more frequent, biennial elections. As such, the American Constitution acknowledged the value of both, long and short legislative terms. The bicameral division of Congress allowed it to incorporate both institutional features in different legislative chambers.

⁴⁰ DSC2: 11, 14 January 1788 (Fisher Ames/Massachusetts).

⁴¹ Joseph Story, *Commentaries on the Constitution of the United States: With a Preliminary Review of the Constitutional History of the Colonies and States, Before the Adoption of the Constitution* (Boston: Hilliard, Gray and Company, 1833), 260.

3. Enhancing Competence by Selecting the Competent

Apart from the above approaches, there was a third way in which the American Constitution attempted to enhance the quality of legislative outcomes: by selecting more competent legislators in the Senate. Whereas the previous two approaches view competence as endogenous to the assembly, the third approach emphasised the prior, exogenous competence of legislators. The role of a second chamber was not only to promote competence in its members, regardless of who comprised it, but to facilitate the *selection* of more competent individuals. Indirect elections to the Senate through state legislators were the key mechanism for securing this aim. They offered a way of ‘refining’ the popular will and ensuring that only superior legislators served as Senators.⁴² In this section, I discuss why indirect elections could facilitate the selection of competent legislators. Further, I look at competing alternatives for elections to the Senate, and grounds on which indirect elections were criticised. Finally, I discuss the elimination of indirect elections through the Seventeenth Amendment to the United States Constitution.

3.1 INDIRECT ELECTIONS AND THE SELECTION OF COMPETENT LEGISLATORS

The idea of competence underlying the design of the Senate was left largely unspecified. As I previously indicated, many participants involved in the making of the Constitution associated such talent with the ‘natural aristocracy’, which they intended to house in the Senate. Although used ambiguously, the term was closely associated with ownership of property. At the Philadelphia Convention, for instance, John Dickinson insisted that the Senate ought to comprise ‘the most distinguished characters, distinguished for their rank in life and their weight of property’.⁴³ Similarly, Gouverneur Morris suggested that senators would be ‘men of great and established property’ known for their ‘ability and virtue’.⁴⁴ Proponents of the indirect election insisted that this mechanism would better ensure the election of commercial classes. Their presence in the legislature was important since it would counter the financially irresponsible impulses of the directly chosen chamber.⁴⁵ So, although the Constitution did not specify a particular conception of competence, members of the Philadelphia Convention tacitly relied on one that linked fitness in legislating with a sound understanding of fiscal policies.

⁴² The metaphor of ‘refinement’ was a recurrent one at the Philadelphia Convention. See *RFC* 1: 50, 31 May 1787 (James Madison); *Ibid.*, 136, 6 June 1787 (John Dickinson/Delaware); *Ibid.*, 152, 155, 7 June 1787 (Elbridge Gerry); *Ibid.*, 251, 16 June 1787 (William Patterson/New Jersey); *Ibid.*, 359, 365, 21 June 1787 (John Rutledge/South Carolina)

⁴³ *Ibid.*, 150, 7 June 1787.

⁴⁴ *Ibid.*, 517, 2 July 1787.

⁴⁵ Vince Eisinger, “Auxiliary Protections: Why the Founders’ Bicameral Congress Depended on Senators Elected by State Legislatures”, *Touro Law Review* 31, no. 2 (2015): 274–77.

Ultimately, it is not just that the Constitution did not specify a particular criterion of competence for senators; rather, it did not *need* to do so. After all, unlike suffrage restrictions and voter qualifications, indirect elections did not depend on constitutionally delineated criteria of competence by specifying qualifications that senators must satisfy. There were good grounds for the framers of the Constitution to adopt a mechanism that allowed them to eschew any such enumeration. First, even when there existed convergence on the notion that the Senate would comprise the ‘natural aristocracy’, there was little agreement on what this term implied. Those involved in the making of America’s Constitution were conscious of the difficulty involved in separating the natural aristocracy from the ‘pseudocracy’, or the good aristocracy from the bad ‘oligarchs’. As the Federal Farmer noted, the term ‘natural aristocracy’ was used ‘to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary’.⁴⁶ John Adams, in a letter to Thomas Jefferson, would go on to write that: ‘Who are these ‘aristoi’? Who shall judge? Who shall select these choice Spirits from the rest of the Congregation?’⁴⁷ Aristocrotis from Pennsylvania preferred satire to underscore this point by writing that:

If any person is so stupidly dull as to not discern who these few are, I would refer such to nature herself for information. –Let them observe her ways and be wise. Let them mark those men whom she has endued with the necessary qualifications of authority; the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the majestic mien.⁴⁸

For all its appeal in the debates over the Constitution, then, there was a marked ambiguity underlying the phrase, ‘natural aristocracy’. Further, as commentators on the Philadelphia Convention remind us, its leading participants had good strategic reasons to downplay the aristocratic features of the Constitution.⁴⁹ The Constitution in general, and particularly the Senate were already under facing considerable criticism for their transfer of power to an aristocratic class. In such circumstances, attempting a positive definition of the ‘natural aristocracy’, which they intended to house in the Senate, would have been a politically costly measure.

Why, though, would indirect elections facilitate the selection of those who were, on the constitution-makers’ tacit conception, competent? Proponents of this method

⁴⁶ Federal Farmer, *Letters from the Federal Farmer*, 267 [31 December 1787].

⁴⁷ John Adams, “Adams to Thomas Jefferson,” in *The Adams-Jefferson Letters: The Complete Correspondence between Thomas Jefferson and Abigail and John Adams*, ed. Lester J. Cappon (Chapel Hill, North Carolina: University of North Carolina Press, 1959), 398.

⁴⁸ Aristocrotis “The Government of Nature Delineated or An Exact Picture of the New Federal Constitution,” in *The Complete Antifederalists*, ed. Herbert J. Storing (Chicago: University of Chicago Press, 1981), 198–212.

⁴⁹ Ellenbogen, *Another Explanation for the Senate*, 267; Richard A. Samuelson, “Consistent in Creation: Thomas Jefferson, Natural Aristocracy and the Problem of Knowledge,” in *Light and Liberty: Thomas Jefferson and the Power of Knowledge*, ed. Robert M.S. McDonald (Charlottesville, Virginia: University of Virginia Press, 2012), 76.

insisted that the indirectness of senatorial elections would help *refine* the popular will through ‘successive filtrations’.⁵⁰ But why would indirect elections serve as a filter, enabling the selection of more competent representatives while excluding less competent ones? One is hard-pressed to find any explanation for this in discussions on indirect elections at the Philadelphia Convention as well as the ratification debates. In what follows, I explore three possible accounts.

First, it is possible that the ‘refinement’ at play was not purely a function of indirect elections, but also the small size of the legislature. Here, the argument went, being a select and distinguished office would invite only the finest men into the Senate’s ranks:

When the number is so small, the office will be highly elevated and distinguished; the style in which the members live will probably be high; circumstances of this kind will render the place of a representative not a desirable one to sensible, substantial men, who have been used to walk in the plain and frugal paths of life.⁵¹

While it is true that the highly competent individuals would be attracted to an esteemed office, open to just a few, it is not clear why other, less competent persons, would not be similarly enticed. More importantly, such an argument would fail to explain what was distinctive about the adoption of a smaller indirectly elected assembly over a directly elected body of the same size. If size were indeed the mechanism fuelling the selection of better individuals, then the American constitution-makers could have simply adopted a numerically small Senate elected directly by the people.

Another account emphasised the higher age and citizenship requirement for senators as a reason for its greater epistemic potential. Unlike House representatives, senators would have to be thirty, instead of twenty-five years old. This meant that they were more likely to possess greater experience in public life. Further, as I have argued in the previous chapter (Section 2.2), age was considered a proxy for wisdom, and the ability to meditate upon issues in a calm manner. On this account, youth was associated with passionate decision-making, which was liable to error. The age qualification, then, served to ensure greater information as well as rationality within the Senate. But this account, too, fails to demonstrate how *indirect elections* enhanced the epistemic quality of the second chamber.

Finally, it is also possible that the argument for indirect elections relied not on the two-staged elections, but on an entirely different mechanism: legislative office qualifications. In the states, there were separate requirements for holding the franchise and running for legislative office. To run for office typically required more property than just casting a vote. As such, the indirect election introduced voter qualifications via legislative office qualifications. It restricted the constituency for

⁵⁰ *RFC* 1: 50, 31 May 1787 (James Madison)

⁵¹ *DSC* 2: 246, 21 June 1788 (Melancton Smith/New York).

electing senators to those with greater property by stipulating higher requirements for holding office. This mechanism was far clearer in the design of the unicameral French national assembly, which emerged from the deliberations of *L'Assemblée Constituante*, just four years after the Philadelphia Convention. The French constitution-makers distinguished between 'active' and 'passive' citizens, and awarded the suffrage only to the former.⁵² This class comprised twenty-five years-old French citizens who had lived in the canton for at least a year and paid direct tax equivalent to three days of local wages. They would elect secondary electors, who, in turn, would elect deputies to the National Assembly. In order to serve as a secondary elector, one needed to pay direct tax equivalent to ten days' local wages. To serve as a deputy, a person would have to pay tax equivalent to fifty days' local wages. Ultimately, this meant that around 70 per cent of citizens could vote in primary elections, 10 per cent qualified as secondary electors, and only 1 per cent satisfied the qualification for deputies.

Indirect elections in America, then, offered an opportunity to use property as a proxy for competence in the election of the national legislature. Like their French counterparts, the American constitution-makers were able to use indirect elections to convert legislative office qualifications into a form of restricted suffrage for the choice of legislators. The refinement at play here was not produced by successive elections, but by the exclusion of the non-propertied qua secondary electors. This is consistent with the suggestion that, although unspecified, property tacitly served as proxy for the kind of competence that members of the Philadelphia Convention sought to secure among senators.⁵³ Since only the propertied classes were, in their capacity as state legislators, eligible to vote for senators, it was likely that they would, in turn, elect other propertied men.

In this respect, the constitutional provisions on the Senate mirrored the American Constitution's approach to the franchise-office relationship, discussed in the previous chapter (Section 2.2). There, I argued that federal legislative office qualifications were seen as unnecessary in America because the ability to vote for legislators had already been restricted to those deemed competent. The Constitution had left in place property qualifications for voters imposed by various states. This eliminated the need for further restrictions on voters' choices. A similar approach underpinned the

⁵² Melvin Edelstein, *The French Revolution and the Birth of Electoral Democracy* (Farnham: Ashgate, 2014), 44.

⁵³ Madison went on to highlight this aspect of the Constitution in a private letter he wrote the year after the Philadelphia Convention. There, he stated that: 'The first question arising here is how far property ought to be made a qualification. There is a middle way to be taken which corresponds at once with the Theory of free government and the lessons of experience. A freehold or equivalent of a certain value *may be annexed to the right of vot[ing] for Senators*, & the right left more at large in the election of the other House' (emphasis mine). See James Madison, "Observations on the 'Draught of a Constitution for Virginia [1788]," in *The Writings of James Madison*, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900), 5: 286.

selection of senators. The Constitution did not need to specify restrictions for senators because the intermediate body responsible for choosing them was already restricted to a select few as a result of legislative qualifications within the states. The ‘refinement’ resulting in the selection of better senators was a function of the greater threshold of competence that secondary electors were required to demonstrate relative to primary voters.

3.2 COMPETING PROPOSALS FOR SELECTING SENATORS

It is worth remembering that, although indirect elections were ultimately chosen as the mode of choosing senators, there were other options on the American constitution-makers’ table. Firstly, one proposal recommended enabling the first chamber of the national legislature to elect members of the second chamber.⁵⁴ In doing so, the first chamber would not be left completely free to select members of its own choice, but would have to choose from among individuals nominated by the state legislators. This proposal was criticised for failing to secure adequate independence for the second chamber vis-à-vis the first. If the point of the Senate was to offer a second opinion on the judgment made by House Representatives, then the latter could not be left to choose senators.⁵⁵

A second proposal sought to award the power of election to the people so that both, the Senate and the House would be directly elected chambers.⁵⁶ This suggestion was rejected on the grounds that it would not contribute anything to the epistemic quality of decisions since the electorate in both cases remained identical. Consequently, voters would elect similar kinds of legislators to both bodies. Instead, the Senate ought to aspire for the representation of different kinds of law-makers rather than replicating the allegedly inferior type found in the House of Representatives.

Against this criticism, James Wilson insisted that was no reason to believe that indirect election, by themselves, would entail a different outcome.⁵⁷ Indirect elections were simply a futile mechanism for securing greater competence in the second legislative chamber. If the people wished to elect a particular class of legislators as senators, then there is no reason why they would not do so through an intermediary body of state legislators. Similarly, in debates over the use of intermediary electors for senators in Pennsylvania, Wilson stated his objection in a different way. He reasoned that one could not consistently deny voters’ ability to choose senators while also affirming their capacity to choose appropriate secondary electors: ‘Will the choice of the people be less valid than the choice of electors? That will not be pretended, since the electors themselves will derive all their authority from the

⁵⁴ *RFC* 1: 152, 7 June 1787 (Elbridge Gerry/Delegate from Massachusetts).

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *RFC* 1: 164, 7 June 1787 (James Wilson/Delegate from Pennsylvania).

people’.⁵⁸ Challenging his critics to demonstrate otherwise, he urged that ‘inconveniences unavoidable in elections by the people, but altogether foreign from elections by electors, ought to be shown clearly and undeniably on the other side’.⁵⁹ Wilson’s comments, taken together, posed an important question for indirect elections. If voters’ choices were unreliable, then why would senators selected by these very voters’ preferred state legislators be any more superior? If, however, we could trust these intermediaries to reliably elect competent senators, then why doubt voters’ judgment in the first place?

3.3 THE REVOCATION OF INDIRECT ELECTIONS TO THE SENATE

Though largely uncontested, except by Wilson, at the inauguration of the Constitution, the indirect mode of election to the Senate became the subject of national political debate in the years to come. The first resolution calling for the direct election of senators was introduced in the House of Representatives as early as February 1826. It was not until 1912 that Congress enacted the Seventeenth Amendment, which was ratified by the states the following year, ultimately dispensing with the indirect election of senators. Between 1826 and 1912, the House of Representatives introduced a resolution calling for direct elections 187 times.⁶⁰

Even in debates leading up to the Seventeenth Amendment, indirect elections had some share of support. Henry Cabot Lodge (Senator for Massachusetts) defended indirect election on the grounds that it afforded an ‘opportunity for reflection, a space for second thought, and no rash haste in reaching important decisions upon which the welfare of millions might depend’.⁶¹ Similarly, New York Senator Chauncey Depew insisted that indirect elections helped ensure that ‘the passions of the hour shall not crystallise into legislation without plenty of time for deliberation and calm judgment’.⁶² But why did the deliberative capacity of the Senate depend on indirect elections? One of the most vocal critics of the Seventeenth Amendment, New York’s Senator Elihu Root, attempted to supply an argument on this front. He insisted that the ability of the Senate to serve as a deliberative chamber hinged on the greater insight and appreciation state legislators could show for its work

⁵⁸ James Wilson, “Speech on Choosing the Members of the Senate by Electors; Delivered, on the 31 December 1789, in the Convention of Pennsylvania, Assembled for the Purpose of Reviewing, Altering, and Amending the Constitution of the State,” in *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007), 1: 304.

⁵⁹ *Ibid.*, 305.

⁶⁰ See David E. Kyvig, *Explicit and Authentic Acts: Amending the U.S. Constitution, 1776-1995* (Lawrence: University Press of Kansas, 1996), 209; Wallace Worthy Hall, “The History and Effect of the Seventeenth Amendment,” Ph.D thesis, Department of Political Science, University of California, Berkeley (1936), 443-56 cited in Ralph A. Rossum, *Federalism, the Supreme Court and the Seventeenth Amendment: The Irony of Constitutional Democracy* (Boston, Maryland: Lexington Books, 2001), 183.

⁶¹ United States Senate (USS), “62nd Congress, 1st Session,” *Congressional Record* (Washington: Library of Congress, 1911), 1911, 6 February 1911. All references to this United States Senate in this chapter are from the *Congressional Record*.

⁶² *Ibid.*, 1337, 24 January 1911.

compared to ordinary citizens, who had ‘far less understanding’ about the chamber’s affairs.⁶³ Presently, senators could explain concessions and compromises of their states’ interests to politicians who were ‘familiar with the incidents and the difficulties of legislation’.⁶⁴ Unlike ordinary citizens, state legislators understood that it was impossible for ‘any one man, or any one locality or any one state can have all of its own way’.⁶⁵ Root insisted that ‘the fair and open-minded yielding to the argument’ within the Senate would end if ‘if every senator has to convince, to explain to the great body of the people of his State every act he performs and every concession he makes’.⁶⁶ Indirect elections were necessary to ensure the selection of such actors, who would ‘never subject themselves to the disagreeable incidents, the labor, the strife, the personalities of a political campaign’.⁶⁷

The move towards direct elections was defended on at least three grounds. First, some questioned the very need for indirect elections, contending that it was based on misplaced suspicion of ordinary citizens’ judgments. Such accounts insisted that the framers of the American constitution had been far too cautious in the design of the country’s institutions. Due to their ‘less faith in the people for self-government’, they ‘insisted on retaining some of the influences and agencies peculiar to a monarchical form of government’.⁶⁸ But time had shown that such anxieties were misplaced, and that citizens could in fact be trusted with greater influence over political institutions. Others put this point a bit differently. Rather than suggesting that the framers of the constitution had exercised too much caution, they insisted that such caution was *no longer necessary at this time*. They emphasised the change in social circumstances of democratic citizenship which ought to affect the way citizens’ capacities for direct election ought to be viewed. For instance, Albert Beveridge emphasised the growth in the size of the electorate. Concerns about demagoguery and passionate surges were appropriate, he argued, in the context of small polities, where citizens met together for debates led by persons skilful in the art of oratory.⁶⁹ But the context of modern politics was very different. ‘No demagogue in the sense of the Greek orators can reach all the American people at one time or even a small fraction of 1 per cent of them. The American millions are not to be swayed as an audience is swayed in a political meeting’, Beveridge argued.⁷⁰ Joseph Bristow, on the other hand, emphasised the rise of circulation of printed material and formal education, as an

⁶³ USS 61.3: 2244, 10 February 1911 (Elihu Root).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ United States House of Representatives (USHR), “62nd Congress, 1st Session,” *Congressional Record* (Washington: Library of Congress, 1911), 209, 13 April 1911 (John Alfred McDowell Adair/Indiana). Also see *Ibid.*: 215, 13 April 1911 (Ollie M. James/Kentucky). All references to the United States House of Representatives in this chapter are from the *Congressional Record*.

⁶⁹ USS 61.3: 2251–52, 10 February 1911 (Albert J. Beveridge)

⁷⁰ *Ibid.*, 2252.

argument for greater trust in voters.⁷¹ Like proponents of expanded suffrage in Britain's second reform act debates, legislators such as Bristow suggested that education and readership of print media constituted proxies for political competence. Their rise meant that persons could be assumed to now have attained adequate fitness to vote directly for senators.

The case against indirect elections also rested on two futility arguments. Citing James Wilson's argument from the Philadelphia Convention, Albert Beveridge insisted that there was no reason why indirect elections would produce better decisions than those enacted by indirectly elected legislators. If persons had the capacity to choose persons who would elect senators, they were capable enough of electing senators themselves. It was unclear why persons could be capable of performing the former task but incapable with respect to the latter. Similarly, William Borah mocked proponents of indirect elections, claiming that:

there seems to be an idea that some mystic, necromantic power exists somewhere in the Government or in this Chamber to perform the functions of government after the people themselves have ceased to act in regard to it; after they have become corrupt and incompetent. It seems to be the opinion of some people that after all living pride and all patriotism have departed from the people that still there would be left somewhere sufficient virtue to operate the Government successfully.⁷²

Moreover, critics of indirect elections pointed to ways in which elections to state legislatures had already become a way of electing senators. The political process involved in electing local leaders had become a *de facto* process for choosing senators, with parties tethering their campaign in the states to their endorsement of candidates for the Senate. As proponents of the Seventeenth Amendment highlighted, elections to the United States Senate had come to mirror the Presidential election in the United States, which was, for all practical purposes, a direct vote by citizens rather than the electoral college in which this power was formally vested.⁷³ On this account, there was no way to really prevent indirect elections from serving as *de facto* direct elections of senators. If anything, routing such elections through the state legislature only hindered their ability to concentrate on the primary task of local law-making for which its members had really been elected.⁷⁴ Further, it was implausible to insist that state legislators ought to exercise independent judgment in electing a senator. Although the working of the indirect model, conceived by the founding figures at Philadelphia, presupposed such judgment, it was precluded by the development of the political party: 'The theory was that the legislature of the state

⁷¹ *USS* 61.3: 2179, 9 February 1911 (Joseph L. Bristow). Also see *USHR* 62.1: 218, 13 April 1911 (Frank Wheeler Mondell/Wyoming).

⁷² *USS* 61.3: 2646, 16 February 1911 (William Borah/Idaho).

⁷³ *USS* 61.3: 2179, 9 February 1911 (Joseph L. Bristow); *Ibid.*, 1104–06, 19 January 1911 (William Borah); *USHR* 62.1: 215, 13 April 1911 (Frank Wheeler Mondell).

⁷⁴ *Ibid.*; *USS* 61.3: 1104, 19 January 1911 (William Borah).

should look all over the state, bound by no consideration of party, restrained by no obligation of any kind except the duty of selecting the wisest, the bravest and the purest man for senator'.⁷⁵ Rather than independently assessing candidates in the Senatorial election, state legislators were now guided by their respective parties.⁷⁶

4. Indirect Elections and the Indian Constitution

I have emphasised ways in which British constitutional thought influenced the design of the American Senate. Let me now turn to the Indian case, and ways in which its constitution was in turn influenced by the framers of its American counterpart. The Indian Constituent Assembly adopted indirect elections for the Rajya Sabha. Members of the second chamber were to be chosen by elected representatives in the state legislatures. This mirrored the composition of the American Senate before it was amended by the Seventeenth Amendment.

4.1 THE EPISTOCRATIC SECOND CHAMBER IN INDIA

The justifiability of a second legislative chamber is by no means uncontroversial. The framers of the Indian Constitution were well aware of this, and cited arguments by figures like Sieyes and Laski against bicameralism.⁷⁷ Recall that one of the prominent justifications for a second chamber lay in the need for delays in order to better scrutinise legislation, and reduce the possibility of impulsive decisions. Several members responded to this through a jeopardy argument which contested the need for delays. They insisted that such delays would harm the dynamism of Parliament, preventing it from acting swiftly to address urgent issues. The second chamber would act as a 'clog in the wheel of progress', preventing speedy transformative decisions.⁷⁸ Legislative delay through a second chamber, then, was a double-edged sword. While it could allow greater time for reflection, it also prevented the legislature from acting speedily. With the establishment of the postcolonial state and its attendant policy challenges, the latter was too significant a cost for the Indian polity.⁷⁹

Others were keener on the adoption of a second chamber, viewing it as an opportunity to correct the risks of adult suffrage through an indirectly elected branch. Enthusiasm for indirect elections was not just restricted to supporters of bicameralism. Some proponents of a unicameral assembly, too, insisted that the sole

⁷⁵ USS61.2: 7127 (Jacob Gallinger/New Hampshire).

⁷⁶ USS61.3: 2252–53, 10 February 1911 (Albert J. Beveridge). Also see *Ibid.*: 2493, 14 February 1911 (Norris Brown/Nebraska).

⁷⁷ See CAD 9.1: 16, 30 July 1949 (Hari Vishnu Kamath/Member for Central Provinces and Berar) and CAD 7.1: 988, 10 December 1948 (Damodar Swarup Seth/Member for United Provinces)

⁷⁸ CAD 4: 926–27, 28 July 1947 (Shibban Lal Saksena/Member for United Provinces). Also see CAD 7.2: 1305–06, 6 January 1949 (K.T. Shah/Member for Bihar); *Ibid.*, 1310, 6 January 1949 (Kuladhar Chaliha/Member for Assam); CAD 9.1: 53–54, 30 July 1949 (N.G. Ranga/Member for Madras)

⁷⁹ For the kind of policy changes members of the Constituent Assembly likely had in mind, see Section 3.1.2 in Chapter 3.

legislative chamber ought to be elected indirectly. At least two kinds of proposals to this effect were placed before the assembly. The first of these was indirect election through village councils. In this model, federal legislators would be chosen through directly elected village councils (Panchayats). Ananthasayanam Ayyangar argued that he would have preferred this mode of election. In his remarks to the Assembly, he reminded his colleagues that ‘More than 14 per cent are not literate in our country and it will take long to make them literate’.⁸⁰ His argument implied that literacy was a proxy for the capacities required for the direct election of legislative representatives. Illiterate citizens could nevertheless choose better educated village councillors, who were more capable of electing federal legislators.

A second proposal sought to institute indirect elections through the establishment of an electoral college. Loknath Misra proposed two-tier elections, whereby a secondary electorate chosen by the people would in turn elect federal legislators. Like Ayyangar, Mishra emphasised the political incapacity of ordinary citizens as an argument against vesting them with the direct power of election: ‘they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses’.⁸¹ Further, he also added a further layer to his argument for indirect election, focusing on the pedagogical potential of small-scale constituencies that it entailed. Whereas large electoral districts could not enable political leaders to educate their constituencies, fragmenting people into small units for the election of secondary elections made this process much easier.

Ultimately, the assembly opted for a directly elected assembly (Lok Sabha) alongside an indirectly elected second chamber (Rajya Sabha). In doing so, it followed the model adopted by the United States Constitution before the Seventeenth Amendment. Concerns like Ayyangar’s and Misra’s continued to play a role in justifying the composition of the Rajya Sabha. Brajeshwar Prasad, for instance, argued that the Lok Sabha would be elected by people who ‘are not only illiterate, but narrow-minded, steeped in fanaticism and superstition’. This, in turn, would ‘release forces of violence and of disorder’ on an unprecedented scale.⁸² The indirectly elected Rajya Sabha could operate as a check on the vagaries of adult suffrage, introducing persons who were wise and literate.⁸³ In other words, at least part of the argument for bicameralism in India focused, as in the American case, on

⁸⁰ CAD 11: 663, 18 November 1949 (M. Ananthasayanam Ayyangar).

⁸¹ *Ibid.*, 647.

⁸² Brajeshwar Prasad stated that: ‘With the inauguration of the new constitution on the basis of adult franchise, it is risky to vest all powers in the hands of the Lower House...I believe that power must be vested in the hands of those who are literate; not only literate but wise too. I believe that power must be vested in the hands of those who are not only wise but who have got a sense of justice. I have no faith that the Lower House, constituted on the basis of adult franchise, will be able to do justice to anybody. People in India are not only illiterate, but narrow-minded, steeped in fanaticism and superstition.’ CAD 9.1: 45–6, 1 August 1949; Also see *ibid.*, 20.

⁸³ Another member, P.S. Deshmukh also attributed the preference for second chambers among his colleagues to ‘distrust of adult franchise’ (*ibid.*, 49). Also see CAD 8: 182, 20 May 1949 (S. Nagappa/Member for Madras).

the incapacities of ordinary citizens, and the potential of indirect elections to select better legislators. Following my argument in the previous chapter, this should not come as a surprise. After all, the framers of the Indian Constitution were, as I suggested, anxious about the establishment of adult suffrage in a largely illiterate society. They were keen on adopting mechanisms that safeguarded the entry of competent individuals into the law-making process despite the presence of electors, who, they feared, would fail to select such individuals. Indirect elections, then, offered them another opportunity to select competent individuals despite the presence of an electorate whose competence was considered, at best, dubious.

Apart from the Rajya Sabha, indirect elections were also adopted for two-thirds of the seats in state legislative councils (Vidhan Parishads). The role of indirect elections in the Indian Constitution is best summed up in the composition of the Vidhan Parishads, the upper legislative chambers in the states. These were to be made up of members elected in the following manner: (i) one-third to be elected by members of municipalities, district boards and such other local authorities; (ii) one-twelfth by persons who have been graduates for at least three years; (iii) one-twelfth by persons who have taught in a secondary school or higher level for 3 years; (iv) one-third to be elected by members of the state legislative assembly (its own members are ineligible); and (v) remainder to be nominated by the Governor (appointed by the central executive) from the fields such as literature, science, art, co-operative movement and social service.

As indicated in the previous chapter, clauses (i) and (iii) stipulated suffrage restrictions whereas (v) instituted legislative office qualifications. Clauses (i) and (v), on the other hand, established indirect elections. Each of these modes of election differed from those adopted for the first chamber composed of legislators through adult suffrage. In fashioning the provincial second chambers as an epistocratic body, then, the framers of the Indian Constitution drew upon each of the three mechanisms examined in the first half of this thesis. Indirect elections in such councils stood alongside restricted suffrage and legislative office qualifications as a way of ensuring the selection of more competent individuals.

The mechanism of indirect elections had a chequered history in Indian constitutional thought under the empire. In the first instance, they had been proposed as a mechanism for circumventing the large size and illiteracy of India's population by colonial officers. But they had also found support as a model of grassroots democracy from none less than Mohandas Gandhi, a figure cited frequently by advocates of indirect election in the Constituent Assembly. The difference between the Gandhian and colonial model lay primarily in the different degrees of power they afforded to the indirectly elected central legislature relative to directly elected bodies. In the Gandhian model, directly elected local councils were to enjoy primacy over indirectly elected bodies. This is perhaps most clearly articulated in Shriman Narayan's *Gandhian Constitution for Free India*, endorsed by

Gandhi himself. Narayan's proposed constitution stated that 'The election will be direct in the village which would enjoy maximum local autonomy'.⁸⁴ Indirect elections to further levels were defended on the grounds that their powers were mainly advisory and coordinative.⁸⁵ Under Narayan's constitutional scheme, important issues like education, agriculture, industry, trade and the administration of justice were left in the hands of directly elected village assemblies. Residual powers, untouched by his proposed constitution, would be vested in the local authorities, further emphasising their primacy over indirectly elected bodies.

The Indian Constituent Assembly opted for a model of indirect elections that more closely approximated the colonial government's rather than Gandhi's or his followers'. It concentrated significant powers within the central legislature, one chamber of which was indirectly elected, rather than empowering directly elected local bodies, as the Gandhian model had envisaged. The colonial government's incorporation of an indirectly elected second chamber, in turn, was modelled closely after the design of the American Senate, adopting the same age qualifications, method of election, and periodic renewal of a third of its members found in the original United States Constitution. The American use of indirect elections, then, continued to influence constitutional design long after it was discarded there—first in the British Government of India Act 1935, and later its analogous provision in the Constitution of independent India.

4.2 CRITICS OF BICAMERALISM

In the above section, I indicated that critics of bicameralism in India drew upon a jeopardy argument, rejecting the need for legislative delays. The case against bicameralism in India also drew upon three futility arguments, which are worth examining in greater detail:

Objection 1: The quality of legislation in modern democracies is assured by various elaborate procedures of an assembly which render second chambers unnecessary.⁸⁶

Objection 2: Second chambers would be unnecessary in India because the Constitution already established a President at the Centre and Governors in the states, who could act as checks on hasty legislation.⁸⁷

⁸⁴ Shriman Narayan. *Gandhian Constitution for Free India*. (Allahabad India: Kitabistan, 1946), 101.

⁸⁵ *Ibid.*, 85.

⁸⁶ *CAD* 4: 679, 18 July 1947 (Hari Vishnu Kamath). Also see his statement at *CAD* 9.1: 15, 30 July 1949.

⁸⁷ *CAD* 9.1: 56, 1 August 1949 (Renuka Ray/Member for West Bengal). Also see her statement at *CAD* 7.2: 1312, 6 January 1949.

Objection 3: Since the party was the locus of power, it would determine decisions in both houses, making bicameralism redundant.⁸⁸

In what follows, I discuss how each of these objections relates to the three kinds of defences of bicameralism found in founding debates over the American Constitution. Recall that the American constitution-makers defended bicameralism on account of its (i) ability to offer a second opinion (ii) introduction of different kinds of institutional features and (iii) selection of more competent individuals in the second chamber.

Objection 1 addresses the first defence for bicameralism, which focuses on the need for second opinions. It insists that second opinions can be provided by procedural mechanisms *within* unicameral chambers, rather than having to establish a second chamber for this purpose. This objection can also undermine part of the second justification for bicameralism, which suggests that the second chamber can be designed in epistemically productive ways in order to enhance the quality of outcomes. Objection 1 insists that the unicameral legislature can contain mechanisms which incorporate such epistemically productive features within its deliberations. However, this objection is unable to undermine the third, epistocratic justification for bicameralism, according to which second chambers ought to introduce better decision-makers into the legislature. If better outcomes require epistemically superior decision-makers, then it is not enough to put inferior decision-makers through institutions that enhance the quality of their judgment; nor is it enough to merely make them consider their decision a second time.

Objection 2, too, seems to address the ‘second opinion’ desiderata, undermining the first defence for bicameralism. To the extent that indirect elections serve as a method of giving power to epistemically superior individuals, this objection also addresses the third criterion on which bicameralism could be defended. Nevertheless, Objection 2 seems to run afoul of the second defence for bicameralism, which emphasises epistemically productive institutional features of the second chamber. If the argument rests on things like a relatively small but numerous body of legislators, then a singular figure like the President is unlikely to fare better. In other words, the President might provide a second opinion, and as an indirectly elected figure, count as an epistemically superior office than a directly elected legislature. But the argument from different institutional features can still give us grounds for preferring an indirectly elected legislature over an indirectly elected President.

Objection 3, unlike the other two, cut across the complete range of arguments offered for bicameralism. It contended that the determination of decisions eventually lay with the political party rather than legislators themselves. As such, a second chamber would merely duplicate decisions taken in party meetings. If power did not

⁸⁸ CAD 7.2: 1311, 6 January 1949 (K. Hanumanthaiya/Member for Mysore).

really lie with the legislators, then none of the three arguments in favour of the second chamber could work. Neither epistemically superior institutional features nor better individuals had much relevance if decisions emanated from outside the chamber. Nor could the second chamber be credited with providing a second opinion if the same party which determined the decision in the first chamber also determined the decision that would be adopted in the other chamber. Interestingly, the same argument had been made repeatedly during debates leading up to the revocation of indirect election for the United States Senate, which influenced the design of the parliament in India. There, as I have indicated, proponents of the Seventeenth Amendment had argued that the American founding figures did not pre-empt the rise of the political party. For indirect elections to produce more competent actors, state legislators had to elect them through their independent judgment, based solely on their judgment about candidates' competence. With the rise of the political party, however, indirect elections operated in a different manner, resulting in the selection of senators based on partisan affiliation.

5. Conclusion

I have argued that the incorporation of indirect elections can be situated in a wider attempt by the American constitution-makers to enhance the competence of the legislative branch. This attempt can be understood as a three-pronged strategy, aimed at securing the epistemic benefits of a second opinion, bicameral division of labour through separate institutional features in each chamber, and the selection of more competent individuals in the second chamber. I argue that indirect elections can be understood as part of this third strategy, aimed at securing better legislators by filtering voters' judgments through secondary electors, and then insulating indirectly elected decision-makers from the judgment of popularly elected secondary electors. Further, I emphasised how the Indian constitution-makers followed a similar approach. As I argued in the previous chapter, the Indian Constituent Assembly remained concerned about the quality of its legislative branch in the face of its experiment of popular democracy. In this context, the use of indirect elections allowed them, like the American constitution-makers, to satisfy themselves that a second chamber, comprising competent individuals, could serve as a check on the popularly elected first chamber.

Leaving the election of senators in the hands of state legislators freed America's constitution-makers from the challenging task of delineating what Senatorial competence comprised. Further, since qualifications for state legislators were already fixed by different states, this also allowed them to avoid the further question of identifying competent secondary electors. Beneath all this, higher property qualifications for state legislators served as a guarantee that they would 'refine' popular judgment offered by ordinary voters. So, possession of personal wealth operated as a proxy for the kind of fiscal competence expected from senators. The

structure of indirect elections and legislative office qualifications allowed the framers of America's Constitution to guarantee such competence in the second chamber without having to enumerate qualifications for senators.

This chapter has also sought to emphasise two distinctive criticisms to which indirect election could be subject. The first, found at the inauguration of the American Constitution, and then, again, during the passage of the Seventeenth Amendment, questions the idea that indirect elections produce better legislators than direct ones. Why, such critics appropriately probed, would legislators elected by the people select better decision-makers than the people themselves could elect? I have suggested that the American constitution-makers failed to explain why such filtration would take place, but that a possible account could be found in their tacit reliance on legislative office qualifications for state legislatures. Such qualifications became *de facto* suffrage qualifications for secondary electors. A second criticism, found during debates over the Indian Constitution, subject the assumption of bicameral independence to scrutiny. It suggested that the presence of the political party meant that indirectly elected chambers could not derive their judgment from a source different from that of the first assembly. In Chapter 7, I explore both these lines of argument in further detail.

Part II The Normative Case against Epistocratic Mechanisms

The second part of this thesis offers a normative critique of each of the mechanisms explored in the first part. Chapters 5 and 6 offer a perversity argument against epistocratic disenfranchisement and legislative office qualifications. They attempt to demonstrate how, given such mechanisms' aim of enhancing the epistemic quality of legislative outcomes, both are likely to be self-defeating. Chapter 7 offers a futility argument against indirect elections. It demonstrates how such elections are unlikely to have any impact on the quality of legislators chosen, and, therefore, the outcomes produced by a legislative body.

Part II

5

The Case against Epistocratic Disenfranchisement

In Chapter 2, we examined debates over educational qualifications for the franchise in Britain's second reform act. I argued that the argument for such a qualification was underpinned by the idea that it would serve as a proxy or precondition of political competence. The notion that some persons ought to be excluded from the franchise has recently made a reappearance. Outside the academy, frustration with voters' ignorance and unreasonableness has come to the fore due to the rise of populism, evidenced in the British referendum on membership of the European Union, and the electoral triumph of Donald Trump in the United States. Many commentators view such events as an indictment of democracy, echoing the call for the exclusion of 'incompetent' voters. They have found support in recent academic work, which suggests that democracy ought to be replaced with an epistocracy that excludes incompetent voters. In this chapter, I explore existing responses to such proposals in contemporary democratic theory, and demonstrate how these can be strengthened. In doing so, I draw on arguments found in our case study on suffrage restrictions, emphasising ways in which they can be extended to offer a stronger case against epistocratic disenfranchisement.

Section 1 begins by laying out the case for competence-based disenfranchisement in contemporary democratic theory. Section 2 then offers an overview of epistemic arguments against competence tests, highlighting why these are particularly valuable in resisting epistocratic disenfranchisement. The subsequent sections then attempt to strengthen the epistemic case against epistocracy in three ways.

1. Epistocracy in Contemporary Democratic Theory

Let me begin by underscoring what I mean by epistocratic disenfranchisement in this chapter. In the introductory chapter to this thesis, I distinguished between epistocratic distribution of political power concerned with 'master knowledge', and issue-specific expertise on subjects like climate change or international trade. My focus is in this chapter lies on constitutional design concerning the former, first-level expertise. Constitution-makers might try and tilt the scales of power in the direction of those who possess greater competence in either of two ways: first, by subjecting all persons to a competence test and enfranchising only those who satisfy a specified threshold

of competence; and second, by giving all or most persons a baseline level of political influence in the form of a vote but by awarding greater voting power to competent persons relative to incompetent ones. As I demonstrated in Chapter 2, legislators in the second reform act adopted a mix of these strategies, altogether disenfranchising some allegedly incompetent actors, while awarding dual votes to a specific class of educated electors. Although my argument in this chapter speaks primarily to the first of these mechanisms (epistocratic disenfranchisement), I return to its implications for plural voting in my concluding remarks.

Indeed, epistocratic constitutional mechanisms can be established in other more inclusive ways. For instance, constitutions may specify that representatives elected through an inclusive democratic process must nominate experts, who are, ultimately, responsible for taking political decisions. In Chapter 7, I argue that, under some conditions, this move can count as epistocratic: when the scope of experts' decisions is unconstrained by elected representatives, and when such experts cannot be recalled from office by their democratically elected selectors. In other words, constitutions can make popularly elected decision-makers cede decision-making authority to actors insulated from popular input. Much controversy around issue-sensitive expertise has revolved around epistocratic mechanisms that untether domain-experts from democratic processes in the way described here. Presently, though, I focus on a more exclusive way of securing competent law-makers, by focusing on the repudiation of popular input from the very beginning.

As we saw in our discussion of the second reform act, critics of an expanded suffrage insisted that the relevant considerations in granting persons the vote were those that related to the common good. Rather than treating individuals as entitled to a vote, such commentators insisted that only those persons or classes ought to be enfranchised who could use this power for the good of the whole political community. John Stuart Mill best exemplified this approach in his comments on the voter's role in the political process: 'His vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a jurymen. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good'. Contemporary epistocrats like Jason Brennan, too, draw upon a similar analogy between a voter and the jury to defend the case for competence-based disenfranchisement. Just as we would not permit irrational, immoral and uninformed people to serve as jurists, so too should we disallow persons with similar epistemic flaws from voting in democratic decisions. Such decisions, after all, share two crucial characteristics with those made by juries. Firstly, they are imposed involuntarily against peoples' will even when they believe some decisions to be grossly incompetent. Further, democratic decisions, like juries, have significant consequences insofar as they can deprive citizens of property, liberty

and life.¹ Therefore, like Mill's 'public trust' argument, Brennan's analogy with the jury insists that the exercise of the vote must be regulated by normative considerations, and not be viewed as a private matter. This leads him to endorse what he calls the competence principle, according to which:

It is presumed to be unjust and to violate a citizen's rights to forcibly deprive them of life, liberty, or property, or significantly harm their life prospects, as a result of decisions made by an incompetent deliberative body, or as a result of decisions made in an incompetent way or in bad faith.²

A second step underlying calls for disenfranchisement in the second reform act emphasised the failure of certain persons to vote competently, as evidenced by their failure to satisfy certain proxies, or preconditions deemed relevant to assessments of political competence. Similarly, the contemporary argument for epistocratic disenfranchisement emphasises persons' inability to respond to questions about substantive and procedural themes relating to their democratic system. It draws on citizens' response to survey questions, success on which is viewed as a proxy for competent political choice:

Bryan Caplan argues that voters are systematically biased and systematically in error about which economic policies will promote their ends. They are worse than ignorant about economics. They know less than nothing. Scott Althaus uses a different data set from Caplan's, but arrives at similar conclusions. He argues that well informed citizens have political preferences systematically different from those of uninformed citizens. If Caplan and Althaus are correct, then voters in democracy do worse than random in selecting leaders and policies. Andrew Healy has produced a series of papers showing that voters in the US and elsewhere punish incumbent candidates for bad weather. Diana Mutz has shown that the citizens most active in politics tend to be (in my words, not hers) cartoon ideologues. Drew Westen has documented cases of serious motivated reasoning and irrationality among politically active citizens. And so on.³

One of the most prominent moves in contemporary democratic theory against epistocratic disenfranchisement has consisted in denying that we can find any objective criteria for distinguishing competent from incompetent voters.⁴ On this account, the problem with epistocratic disenfranchisement is that it relies on criteria for political competence, which is an 'essentially contested' concept. There exists, what Laura Valentini calls, 'thick reasonable disagreement' over what constitutes

¹ Bryan Caplan similarly argues that 'A test of voter competence is no more objectionable than a driving test. Both bad driving and bad voting are dangerous not merely to the individual who practices them, but to innocent bystanders'. See Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton: Princeton University Press, 2006), 197.

² Brennan, *Against Democracy*, 141.

³ *Ibid.*, 722.

⁴ David Estlund, *Democratic Authority*, 41. Laura Valentini, "Justice, Disagreement and Democracy," *British Journal of Political Science* 43, no. 1 (2013): 177–99.

competence in a voter.⁵ By this, she means that our disagreement over an issue cannot ‘cannot simply be traced to inconclusive evidence, ignorance or bad reasoning’.⁶ Instead, it rests ‘at least partly, on the lack of a commonly agreed account of what would make a claim about justice true or false’. Valentini argues that:

We can easily point to experts in physics, mathematics, astronomy, medicine and so forth, but when it comes to morals, there is no undisputed, publicly justifiable, criterion for identifying expertise. Is the Pope a moral expert? Or perhaps the Dalai Lama? Are political philosophers the true experts? What about political activists, politicians, judges or free thinkers? It seems impossible to give a non-controversial answer to these questions.⁷

This argument mirrors concerns found in the British as well as Indian debates studied in Part I. As I demonstrated, critics of qualifications for the franchise and legislative office found themselves hard-pressed to agree on the appropriate criteria as well as test for political competence. In the Indian debates over legislative office, some members of Parliament insisted that a robust qualification, capable of capturing fitness for serving as a legislator, was impossible to specify. They argued that this was a sufficient reason to altogether eschew legislative office qualifications. We might similarly insist that the intractability of finding an appropriate qualification is sufficient to repudiate to case for competence-based disenfranchisement.

The contemporary epistocratic response to this objection lies in conceding that any competence test for voters is likely to be unjust.⁸ No test could overcome the problem of reasonable disagreement, thereby rendering its imposition unjust. Yet, Brennan argues, transferring political power to incompetent people involves an even greater injustice.⁹ Universal adult suffrage entails giving people coercive power over others’ lives and liberties. By giving such power to incompetent voters, we risk subjecting citizens to unjustifiable control over how they conduct their lives. Restricting suffrage only to competent voters, however, would facilitate the realization of prosperity and various humanitarian goals.¹⁰

The contemporary case for epistocracy, therefore, denies that its emphasis on the instrumental benefits of disenfranchisement is out-weighted by a proceduralist argument from reasonable disagreement over criteria for competence. There is, nevertheless, one argument in democratic theory that allows us to reject epistocracy on its own terms. The epistemic case against epistocracy, which I explore below, insists that the consequentialist appeal of disenfranchisement is much weaker than it seems. On this account, competence-based disenfranchisement would render a political arrangement epistemically flawed, undermining the achievement of sound

⁵ *Ibid.*, 183

⁶ *Ibid.*

⁷ *Ibid.*, 190

⁸ Brennan, *Right to a Competent Electorate*, 716

⁹ *Ibid.*, 717–21

¹⁰ *Ibid.*, 721–24

outcomes that epistocrats promise. In the remainder of this chapter, I focus on this particular set of arguments, and demonstrate ways in which they can be strengthened.

2. The Epistemic Case against Epistocratic Disenfranchisement

In his book, *Democratic Authority*, David Estlund advances what he calls the ‘demographic objection to epistocracy’, which offers an epistemic argument against competence tests for the franchise. Estlund argues that ‘The educated portion of the populace may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of education’.¹¹ He reminds us that access to knowledge is ‘disproportionately the privilege of members of certain races, classes, and (formerly) genders. And even in a more ideal society, there may well be demographic patterns that make the pool of university applicants less than statistically representative’.¹² This argument focuses on the poor outcomes of unjust distributions of education. It insists that because epistocratic disenfranchisement would entail the systematic overrepresentation of some groups and underrepresentation of others, it is likely to produce substantively unjust outcomes; such outcomes are likely to favour advantaged groups while further disadvantaging already disadvantaged groups. There also is no easy way of correcting for the underrepresentation of certain races, classes and genders. As Estlund argues, the demographically adjusted group of educated persons may still have some epistemically distorting feature or another, which travels with education.¹³ Further, we need not attribute any perverse motives to advantaged groups. Estlund insists that even if people act with good will rather than the neglect of others’ interests, they are inevitably biased by their race, class and gender.

A second epistemic argument against epistocratic disenfranchisement can be found in the work of Hélène Landemore, who insists that we ought to focus on the collective intelligence of a political arrangement rather than the individual competence of its members. Although above-average competence might be helpful in some respects, the perspective of experts might be limited in others, resulting in common blind-spots.¹⁴ Her suggestion relies upon what is known as the Diversity-Trumps-Ability theorem. The emphasis on cognitive diversity leads to the idea that legislative assemblies should be numerically large:

My contention is that the cheapest, simplest way to ensure great cognitive diversity is by including more people in the group of

¹¹ Estlund, D.M. 2003. “Why Not Epistocracy?,” in Naomi Reshotko (ed.), *Desire, Identity and Existence: Essays in Honor of T.M. Penner*. Edmonton, Alberta, Canada: Academic Printing and Publishing, 53–69, 62.

¹² Ibid.

¹³ Estlund, *Democratic Authority*, 216.

¹⁴ For a defence of the theorem in the context of democratic politics, see Landemore, H. (2013). *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*. Princeton: Princeton University Press.

decision-makers. This is so because numbers will naturally increase cognitive diversity. I say “naturally” on the (I think) plausible assumption that cognitive diversity is normally present in any typical group of human beings, since different people come into the world equipped with different cognitive toolboxes.¹⁵

These epistemic arguments mirror anxieties expressed by proponents of suffrage reform in the British constitutional debates studied in Chapter 2. Such reformers insisted that workers had certain distinctive interests over which they had unique insight. Their exclusion from the suffrage meant that decision-makers were unable to adequately factor knowledge of such interests into their deliberations. Unless workers were enfranchised, legislative decisions, such as questions concerning the distribution of education, would continue to suffer from these blind-spots, worsening the situation of the working classes.

The subsequent sections of this chapter attempt to strengthen these epistemic arguments in three different ways. But let me first begin by underscoring their value in resisting the case for competence-based restrictions for the suffrage.

2.1 THE DISPARATE IMPACT OF COMPETENCE TESTS

Competence-based disenfranchisement is vulnerable to the epistemic arguments outlined above because it would have a disproportionate impact across different demographic groups. Empirical research demonstrates that there are significant differences in political knowledge across gender, racial and ethnic groups. Blacks and Hispanics consistently score lower than non-Hispanic whites, while women score lower than men on tests for political knowledge.¹⁶ Disparity in political resources plays a crucial role in producing unequal distributions of political knowledge across demographic groups. Similarly, socialisation into varied expectations about political knowledge, and the historical absence of certain groups from the political domain can also contribute to such inequities.¹⁷

One might now insist that we ought to design tests that are able to capture the competence of disadvantaged groups, ensuring that they are not disproportionately excluded. Doing so can undermine the force of epistemic arguments by ensuring that

¹⁵ Landemore, H. (2012). ‘Why the Many Are Smarter than the Few and Why It Matters’. *Journal of Public Deliberation*, 8(1), Article 7, 5. I agree with Landemore that the correlation between group size and cognitive diversity is not always verified, but that it is generally more plausible than the reverse assumption that cognitive diversity decreases as the number of people go down.

¹⁶ Michael X. Delli Carpini, “In Search of the Informed Citizen: What Americans Know about Politics and Why It Matters,” *The Communication Review* 4, no. 1 (2000): 141-2; Jay K. Dow, “Gender Differences in Political Knowledge: Distinguishing Characteristics-Based and Returns-Based Differences,” *Political Behavior* 31, no. 1, 117-36; Jennifer Wolak & Michael McDevitt, “The Roots of the Gender Gap in Political Knowledge in Adolescence,” *Political Behavior* 33, no. 3 (2011): 505-33.

¹⁷ Sidney Verba, Kay Lehman Schlozman, Henry Brady and Norman H. Nie, “Race, Ethnicity and Political Resources: Participation in the United States,” *British Journal of Political Science* 23, no. 4 (1993): 453-97.

no perspectival loss results from the exclusion of incompetent voters. There would be good reasons to remain pessimistic of that approach. The surveys highlighted above have been conducted by political scientists sensitive to socio-economic disadvantage, and concerned with the most valid possible conception of competence. There is little reason to believe that designers of competence tests would do any better such that their standards would exclude fewer disadvantaged persons.¹⁸ Indeed, one might question the use of standardised ‘tests’ altogether, and their focus on ‘information’, insisting such assessments misunderstand what competence in a voter comprises. Perhaps all political science research into citizens’ ignorance has operated with an entirely inadequate conception of ‘competence’, and a paradigmatic shift in their understanding would offer a different picture. For now, I bracket this worry, returning to it in the concluding chapter of this thesis.

There are further reasons to believe that competence tests designed to assess prospective voters would disadvantage socially and economically marginalised groups. Insofar as resources are convertible into other opportunities, it is likely that advantaged groups would continue to be disproportionately included under a competence-based franchise. Jason Brennan, for instance, suggests that competence tests might spur Princeton Review-style ‘classes’, where people would try and obtain the kind of information they need in order to obtain a vote.¹⁹ Such opportunities are likely to be available to already advantaged persons, giving them a disproportionate chance of faring well even on some revised competence test. Finally, it is worth recognising that epistocrats like Brennan themselves recognise that the exclusion of disadvantaged groups is an inescapable outcome.²⁰ So, let us accept that competence tests are likely to exclude already disadvantaged persons, who have unequal access to competence.

2.2 THE DISTRIBUTION OF COMPETENCE AND THE JUSTIFIABILITY OF EPISTOCRACY: TWO THESES

Inequalities in competence across demographic groups raise what we could call the distribution question: is it justifiable to insist upon the competence-based political exclusion of persons who lack such competence due to unjust systemic features of a society? One might respond to this question in two ways. The first response, *the connection thesis*, insists that there is something wrong with disenfranchising people who lack competence because of social structural injustices which they suffer. In

¹⁸ This is, of course, on our most optimistic understanding of the test designers’ intentions. The point applies with even greater force if we factor in the partisan exclusions that such tests are likely to generate.

¹⁹ Jason Brennan, “The Right to a Competent Electorate,” *The Philosophical Quarterly* 61, no. 245 (2011): 719.

²⁰ Brennan, *Against Democracy*, 228.

making this argument, we might insist that the justifiability of epistocracy cannot be distinguished from whether or not competence is distributed equitably across different social groups. There seems something intuitively wrong about penalising persons for facing some disadvantage over which they have little control.

Alternatively, the epistocrat might agree it is unfair that some groups are unable to act competently because of social structural injustices. Nevertheless, that is a *separate* matter from whether or not epistocracy is justified. The second response can be outlined in two ways. The first, *temporary separation thesis*, suggests that the imposition of epistocracy despite the unequal distribution of competence is justified as a transitional measure. Given extant distributions of competence, power must regrettably be transferred to a certain demographic group for the time being. This is acceptable as a transitional measure aimed at bringing about an equitable distribution of competence. After a more or less brief period of time, the unequal distribution of competence, which gives greater power to certain disadvantaged groups, would no longer obtain. The *temporariness* of one group holding disproportionate power seems to undergird the suggestion that this is a regrettable choice under non-ideal circumstances. As we noted in Chapter 2, the assumption of temporariness, pivotal to this account, underpinned Mill's argument for the educational qualification. While acknowledging that society could not presently ensure it was attainable by all, he insisted that this qualification would soon exclude only those who chose to not undertake effort for its realisation.²¹ Proponents of this position, such as Mill, may hesitate to endorse an arrangement where some demographic group *perpetually* held political power. Alternatively, one might advance a *perpetual separation thesis*. On this account, all that matters for the justifiability of political arrangements is their ability to deliver epistemically superior outcomes. Insofar as epistocracy performs better than available alternatives on this front, whether or not it produces an equitable distribution of competence in society is irrelevant.

2.2.1 The Temporary Separation Thesis: The Perverse Incentives Argument

The temporary separation thesis is vulnerable to the objection that the establishment of epistocracy puts in place perverse incentives to block equitable distributions of competence. Consider the argument against educational qualifications in the aftermath of abolition in America. Critics argued that this would provide an incentive to keep the formerly enslaved population in a state of ignorance. As one legislator argued, '[S]uppose that after adopting this educational qualification, [a state] should fail to provide that these people whom we now know to be ignorant, shall hereafter be educated, should simply let them severely alone? Or suppose that they interpose

²¹ See John Stuart Mill, "Considerations on Representative Government [1861]," *Collected Works* 19: 471

such restrictions by indirect laws as to practically prevent them from being educated'.²² Such criticisms were underpinned by recognition of the idea that the domain of education is frequently the subject of intense political and theoretical controversy partially because of the extent to which it can affect persons' opportunities in life. As such, those in a privileged position have a strong incentive to retain their hold over education. By linking education with political power, epistocracy strengthens an already strong incentive for those in positions of privilege to resist a more equitable distribution of education. In other words, whatever other reasons there exist for wanting to retain unequal distribution of education, epistocracy adds to that list, a fairly compelling reason—the retention of political power.

The epistocrat might object that epistocracy, like democracy, rests on the assumption that political agents do not care merely for their own interests.²³ Both arrangements require a level of trust in the voter, treating her as an agent concerned with the welfare of others. As such, it would be insufficient to attribute to epistocrats the kind of self-serving motives that the argument about perverse incentives suggests. But one does not need to attribute to epistocrats the level of self-interested behaviour that *instituting barriers* to access would require. In order to retain political power through inequitable access to education, epistocrats need not go out of their way to establish novel obstacles. Indeed, those actions would require a certain level of self-seeking behaviour that one should be wary of attributing to individuals while thinking about which political system we ought to implement. But epistocrats need not *establish* such barriers to retain control over power; those barriers already exist. In order to retain political power, all they need to do is *maintain status quo* or *not make adequate attempts to displace it considerably*. These omissions do not require us to make particularly strong assumptions about epistocrats' motives as in the case of worries about institution of new barriers. But if one need not attribute any tremendous self-seeking tendencies for maintaining unequal distributions of knowledge, one would have to assume high degrees of motivation for epistocrats to *actively dismantle it*.

What critics of the educational qualification in America said about the distribution of formal education can be applied to access to political competence more broadly conceived. In an unjust society, where the distribution of resources required for competence is skewed against disadvantaged groups, there is reason to believe that epistocracy would fail in bringing about equitable distribution of political knowledge. Those enfranchised under epistocracy would have to possess a particularly high degree of motivation to undermine status quo. They would have to perform the considerably demanding task of dismantling structures that privilege them in order to bring about the required redistribution.

²² *USHR* 39.1: 407, 24 January 1866 (Frederick Pike/Maine).

²³ See, for instance, Jason Brennan, "Does the Demographic Objection to Epistocracy Succeed?," *Res Publica* 24, no. 1 (2018): 66.

The epistocrat might now respond in two ways. Firstly, she could insist that we ought to view persons enfranchised by epistocracy as motivated by altruistic considerations. Not only do they eschew self-seeking behavior, but they actually undertake the more motivationally demanding task of attempting to redistribute resources to disadvantaged groups, in a way that ensures that competence is found equally among all demographic groups. Further, the epistocrat could retreat to what I have called the perpetual separation thesis, insisting that there is little reason to worry about which demographic groups hold political power as long as they continue to deliver epistemically superior outcomes.

2.2.2 The Permanent Separation Thesis and the Epistemic Case against Epistocracy

At this point, the value of epistemic arguments against epistocracy is most evident. Such arguments suggest that the political exclusion of certain groups is likely to produce decisions that are epistemically flawed. As such, they help respond to both objections highlighted above. First, they allow us to criticise epistocracy without having to attribute self-seeking behaviour to the actors it enfranchises or advantages. It is possible to insist that epistocracy is unjustified because of its *epistemic* weaknesses rather than the absence of appropriate motivations in the actors it favours in the distribution of political power. Crucially, epistemic arguments offer a case against the perpetual separation thesis as well. Our argument against the temporary separation thesis was limited to demonstrating why epistocracy would fail to bring about equal distribution of competence. It relied on the idea that such distribution served as a proceduralist side constraint on epistocratic arrangements. By contrast, epistemic critiques allow us to reject epistocracy on purely *instrumentalist* grounds, engaging with the perpetual separation thesis on its own terms. They allow us to argue that ‘democracies and their procedures are, all things, considered, a better epistemic bet than expertocracies’.²⁴ The emphasis on the epistemic dimension of political institutions should not be taken to suggest that this is all there is to normative democratic theory. Instead, it takes seriously the notion that we should not cede the instrumentalist argument to the anti-democrat, allowing him to insist that from this perspective, democracy has little value. This is compatible with insisting that, ultimately, the value of democracy cannot be reduced to its epistemic potential.

There is another reason why the arguments urged by the epistemic case against epistocracy matter from an instrumentalist perspective. If, as proponents of this case insist, epistocracy is likely to produce epistemically sub-optimal decisions, then part of this failure would consist in their inability to correct injustices in the distribution of competence. This renders the epistemic flaws of epistocracy self-perpetuating. This vicious cycle underscores an important respect in which epistocratic disenfranchisement differs from the imposition of age qualifications for the vote.

²⁴ Hélène Landemore, “Yes, We Can (Make It Up on Volume): Answers to Critics,” *Critical Review* 26 nos. 1-2 (2014): 192.

Kasper Lippert-Rasmussen, for instance, advances what he calls the ‘The time-sensitive privileged knowledge status claim’: ‘For any demos and any given time, it is true that there is some group of people which is different, extensionally speaking, from the demos and which knows the normative standards better than others and, thus, knows better what the decisions that conform to those standards are’.²⁵ Whether or not age qualifications result in better outcomes, their epistemic performance has no bearing on who they exclude. Indeed, it might be the case that age qualifications make children worse-off, affecting their long-term interests. However, they cannot prevent children from acquiring the basis for political inclusion, namely the stipulated age threshold. On the other hand, epistocratic arrangements not only produce epistemically worse decisions, but in doing so, they also maintain unequal distributions of competence across demographic groups. As a result, they reproduce the conditions for their epistemic failure.

2.3 STRENGTHENING THE EPISTEMIC CASE AGAINST EPISTOCRATIC DISENFRANCHISEMENT

Having outlined the value of epistemic critiques of epistocracy, let me now turn to ways in which these can be strengthened. First, I argue that the epistemic case against epistocracy need not rely on the principle that each person is the best judge of their own interests. Instead, it is possible to draw this case by appealing to a significantly weaker idea, the ‘necessary interlocutor principle’, which suggests that others might be able to understand our interests better than ourselves, but that we ought to be included in deliberation over our own interests. Second, I argue that epistemic arguments can be strengthened by paying closer attention to the *kind* of demographic groups epistocracy would privilege in the political process. As of now, such arguments seem insensitive to whether power is awarded to disadvantaged or privileged social groups. The exclusion of any group is viewed as epistemically suspect because it is seen as precluding adequate consideration of its views. Instead, I propose focusing on the distinctive epistemic obstacles that *privileged social groups* face in accessing the interests of disadvantaged persons. Third, I argue that the basis of epistocratic disenfranchisement is relevant to our assessment of its justifiability. That it disqualifies certain persons *qua incompetent* has important consequences. In Chapter 2, I noted that some proponents of reform insisted that the denial of suffrage constituted a form of social stigma or disrespect. I indicated that this suggestion could help make sense of their claim that exclusion from the vote would produce a deliberative asymmetry, preventing workers from contributing to political deliberation over their interests. The final section of this chapter rehabilitates this argument, and demonstrates how it can strengthen the epistemic case against competence-based disenfranchisement.

²⁵ Kasper Lippert-Rasmussen, “Estlund on Epistocracy,” *Res Publica* 18, no. 3 (2012): 246–47.

Note that this chapter aims only to strengthen existing epistemic arguments rather than defending them *de novo*. In response to the revised epistemic case, the epistocrat might suggest that deliberation which includes epistemically incompetent agents will fare worse than that conducted between epistemically competent ones. Indeed, competent actors might have their blind-spots, which render deliberation between them sub-optimal. But the epistocrat might insist they would nevertheless fare better than a deliberative body that included incompetent persons. In her work, Hélène Landemore provides a detailed defence of inclusive deliberation, insisting that cognitive diversity matters a great deal more than individual ability from an epistemic perspective.²⁶ Her work suggests that democratic deliberation under ideal settings can enlarge the pool of ideas, weed out good from bad arguments, and facilitate better outcomes than less inclusive deliberative procedures. This chapter does not aim at rehearsing such arguments and demonstrating why democratic deliberation is a safer bet epistemically than its epistocratic counterpart. Instead, it only aims at strengthening certain aspects of the epistemic argument for democracy. My own contribution, then, should be read alongside her detailed defence of the epistemic superiority of inclusive deliberation over epistocratic decision-making.²⁷

3. Shedding the Best Judge Principle

Several democratic theorists rely on what is known as the ‘best judge principle’ in their defence of democratic institutions.²⁸ David Estlund’s demographic objection, too, tacitly relies on this principle. Estlund argues that even if persons advantaged by epistocracy gave ‘full and fair weight to the interests of everyone, to the best of their ability’, they would be limited by ‘their knowledge and experience of what those

²⁶ Landemore, *Democratic Reason*, 89–117

²⁷ So far, the response from the epistocratic side has been far from satisfactory. Jason Brennan, for instance, rejects Landemore’s suggestion that deliberative procedures ought to be appropriately reformed in order to perform the epistemic potential she attributes to them. See Brennan, *Against Democracy*, 69–73. Brennan suggests that such arguments rely on a priori understandings of deliberation and are insensitive to its actual pathologies. But this seems to make Brennan guilty of methodological doublespeak. His insistence upon a realist approach towards democracy as it exists contrasts starkly with an idealized view of epistocratic institutions. If we must contend with democracy as it exists, then perhaps we ought to compare it to epistocracy as it existed under, say, colonialism, or the regime of literacy qualifications for suffrage in mid-twentieth century America. If we believe these were bad cases of epistocracy, and epistocracy *proper* would fare better, then there is no reason to discount such arguments for democracy, properly designed, as Brennan does. In other words, comparisons of the epistemic capacities of democracy and epistocracy must proceed either from equally realist perspectives, or permit both to reject their contingent features.

²⁸ For the role of the best judge principle in grounding respect for democratic procedures, see Melissa Schwartzberg, *Counting the Many: The Origins and Limits of Supermajority Rule* (Cambridge University Press, 2014), 112–14; Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 105.

interests are’.²⁹ This would prevent due consideration of the interests of those disenfranchised by epistocracy. The underlying idea seems to be that people themselves are the best judges of their interests, whereas all others are epistemically deficient in this respect.

As previous commentators have emphasised, there are good reasons to be sceptical towards the best judge principle. First, as critics have argued, our actions, driven by weakness of will, can distort beliefs about our interests. We may find ourselves unable to do what is necessary to pursue our self-perceived goals when the time comes. In such cases, we might try and avoid cognitive dissonance by altering our beliefs, and treating interests that we do not have the heart to act upon as not being our interests at all. Further, others have emphasised our ability to misjudge our interests when this involves probability calculations. Such calculations are often vitiated by our unwarranted optimism about our own life prospects, discounting the probability of risk to ourselves. Finally, critics also argue that the best judge principle fails to appreciate the extent to which persons demonstrate an irrational bias towards present over future interests.³⁰

It might, of course, be possible to rescue the best judge principle from such arguments. Rather than pursuing that strategy, I will demonstrate that the epistemic case against epistocracy need not rely on this controversial principle at all. Instead, it is possible to replace it with a more modest account of the relationship between persons’ interests and their knowledge of their interests, which I call the necessary interlocutor principle. Contrary to the best judge principle, the necessary interlocutor position concedes that others might be able to judge our interests better. Yet, it insists that others must engage us as interlocutors in deliberation over our interests.³¹ The principle requires fairly exhaustive deliberation with those whose interests are at stake, insisting that decision-makers must test the validity of their judgments against claims made those persons. There are at least two reasons why this engagement demanded by the necessary interlocutor position is warranted on epistemic grounds: first, in order to obtain adequate information about persons’ circumstances, and second, for better insight into their mental states that are relevant to decisions about their interests.

The idea that the pursuit of interests requires knowledge of persons’ objective circumstances is relatively uncontroversial. Yet, one might dispute the idea that we are best judges of those circumstances. I think it is nevertheless possible to make the weaker claim that there are *some* aspects of our circumstances for which we have

²⁹ Estlund, *Democratic Authority*, 216.

³⁰ For an overview of such arguments, see Robert Goodin, “Liberalism and the Best-Judge Principle,” *Political Studies* 38, no. 2 (1990): 181–95

³¹ Although Landemore does not address this directly, I believe a principle of this sort is closer to her views on deliberation and the perspectival grain of truth different people hold. See Landemore, *Democratic Reason*, 97–104. As such, the recommendation for shedding the best judge principle is largely aimed at Estlund’s demographic objection.

greater insight than others. In several cases, persons' interests could pertain to aspects of social life from which others are excluded. This might include domains from which others remain altogether immune: for instance, having to navigate through a corrupt machinery in the distribution of welfare benefits. Further, this may also include domains which others, too, participate in, but experience in very different ways. A white student from a well-off family could experience her university education very differently from an ethnic minority student from an economically deprived area. The significance of persons' knowledge about their own circumstances is particularly apparent once we recognise the dynamic nature of social structural processes. Even if we obtain insight into the kind of injustice some persons face, but from which we ourselves are immune, we cannot be sure that our judgments are valid over time. Persons immediately affected by unjust social structures can serve as an important epistemic resource, alerting us to new forms of injustice that require attention. This claim does not suggest that I have an overall better understanding of my objective circumstances, nor does it recommend that others cannot obtain insight into those aspects over which I have privileged access. Instead, it merely insists that, given my greater insight into some aspect of my circumstances, I should be included in deliberations over my interests if others' judgments about them are to be sound.

Secondly, there is at least one kind of knowledge to which my privileged access is relatively uncontroversial. Most people would agree that I have better insight than others into my own mental states, such as my anxieties, emotions or attitudes.³² Less obvious is the relevance of such states in assessments of my interests. If my actual interests are independent of what I desire, then it appears that my mental states have little value in evaluating how to best serve my interests. But this conclusion would be too hasty. Although our desires and beliefs about our interests can be mistaken, there are various conditions under which they can nevertheless be relevant in assessments of our interests. As Joseph Raz argues, our inclinations can play an important role in determining the right course of action for ourselves. 'Many of our decisions, in matters small and large, are under-determined by reason', he argues.³³ In such circumstances, our inclinations—having come to care about one thing rather than another—can settle, what was prior to our commitment, unsettled. Further, the success of specific strategies aimed at securing my interests can depend at least in part on my attitude to such attempts. A strategy might fail because I do not lend it adequate support or because I proactively try and vitiate it. Another method, formulated after having consulted me, might have been more successful in securing the same end. For instance, a patient might fear intra-venous treatment, and may, as a result, be less likely to seek treatment for a certain condition. He might feel overlooked by a particular physician, and, therefore, deliberately disregard her prescribed course of

³² T.M. Wilkinson, "Judging Our Own Good," *Australasian Journal of Philosophy* 74, no. 3 (1996): 488–94.

³³ Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 388.

treatment. These comments lend further support for the necessary interlocutor position. Insofar as knowledge of persons' mental states is relevant in judging how to best pursue their interests, they can justifiably demand inclusion in deliberation.

The principle defended here ultimately demands only the inclusion of persons in deliberation over their interests. Why would this pose a problem for epistocratic disenfranchisement, which merely demands the exclusion of persons from the vote? I return to this question in section 5 of this chapter.

4. The Distinctive Epistemic Cost of Excluding Disadvantaged Persons

The necessary interlocutor principle underscores the need for persons to deliberate with us if they are to adequately access our interests. It is insensitive, though, to the social position of given demographic groups. It serves as a general principle, emphasising the need for deliberative engagement with *any* social group whose interests are at stake in a given decision. But, as I argue in this section, socially privileged groups attempting to understand the interests of disadvantaged persons face certain distinctive challenges which require further attention.

Both, Estlund and Landemore appropriately note that political outcomes would incur epistemic costs because of the exclusion of certain demographic groups that epistocracy would entail. Estlund suggests that these epistemic costs result from *biases* persons are likely to hold towards their own interests even if they were to act in an appropriately motivated manner. Similarly, Landemore points to the *loss of perspective* that political exclusion entails. She insists that irrespective of their other epistemic strengths, all political actors, including experts, are limited by the perspective they occupy on the social world. In order to perform well collectively, they must ensure that the gaps in their perspectives are filled in by others who see the world differently. With their focus on bias and perspectival loss, these arguments apply to whichever demographic group is excluded or disadvantaged by epistocracy. Were we to exclude privileged social groups from political deliberation, disadvantaged people in power would suffer similar epistemic blind-spots. I propose to strengthen their case by drawing attention to *epistemic avoidance*, which makes it particularly difficult for advantaged social groups to access the interests of disadvantaged persons. The challenge for such groups lies not so much in ignorance induced by bias or perspectival gaps, but by a need to not know certain kinds of things.

Standpoint theorists have long emphasised a particular kind of ignorance, which is attached specifically to positions of social dominance:

As a defence mechanism, those in a position of privilege are often encouraged to hide their heads in the sand like ostriches with respect to certain aspects, presuppositions, or consequences of the oppression that sustains their privilege. They need to ignore certain

social realities. They need to live without having certain truths present in their minds...This form of cognitive self-protection...is not typically erected openly and consciously...It does not result from a decision or conscious effort to ignore, but from a socialization that leads one to be insensitive to certain things and immune to certain considerations.³⁴

Feminist theorists have argued that privileged social groups are particularly vulnerable to epistemic avoidance of this sort because of the investment they have in maintaining an understanding of themselves as good persons.³⁵ They wish to view themselves as ethical actors who do the right thing even as they enjoy the benefits attached to positions of social dominance under circumstances of structural injustice. Structures through which one has accumulated privilege do not ordinarily exist in a vacuum, but in a normative space where they have been justified as legitimate. Confronting privilege, then, involves exposing oneself to a great deal of cognitive dissonance, which individuals tend to avoid.

The idea that we avoid acquiring information that could compromise our view of ourselves as moral actors is not entirely speculative. In a series of experiments, Jason Dana, Roberto Weber and Jason Xi Kuang highlight individuals' reliance on ignorance as an excuse for acting selfishly.³⁶ Their study modifies the standard version of the 'dictator game', where a player designed as the 'dictator' is asked to determine how to split an endowment (such as a cash prize) between herself and a second player (the 'recipient'). The dictator is faced with two options: A, which gives her a high payoff with a very low payoff for the recipient, and B which gives her a slightly lower payoff than A, but gives the recipient a much higher payoff. Subsequent studies have shown a preference for the second option, interpreted as individuals' commitment to equity that have priority over pure self-interest. Dana et al. modify the dictator game to introduce 'hidden information'. In this version of the experiment, the dictator does not know if choosing a higher payoff for herself would entail a higher or lower payoff for the recipient. She is given the option of revealing this information, and knowing what the recipients obtain when she chooses a higher pay off. Strikingly,

³⁴ Jose Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and the Social Imagination* (Oxford: Oxford University Press, 2012), 35–36. Also see Nancy C. M. Hartsock, "The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism," in *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science*, ed. Sandra Harding and Merrill B. Hintikka (Dordrecht: D. Reidel, 1983), 283–310; Alison Wylie, "Why Standpoint Matters," in *Science and Other Cultures: Issues in Philosophies of Science and Technology*, ed. Robert Figueroa and Sandra Harding (New York: Routledge, 2003), 26–48.

³⁵ Alison Bailey, "Strategic Ignorance," *Race and Epistemologies of Ignorance*, ed. Shannon Sullivan and Nancy Tuana (Albany: State University of New York, 2007), 77–94; Gaile Pohlhaus, "Wrongful Requests and Strategic Refusals to Understand," *Feminist Epistemology and Philosophy of Science: Power in Knowledge*, ed. Heidi E. Grasswick (Dordrecht: Springer, 2011), 223–240.

³⁶ Jason Dana, Roberto Weber and Jason Xi Kuang, 'Exploiting Moral Wiggle Room: Experiments Demonstrating an Illusory Preference for Fairness.' *Economic Theory* 33, no. 1 (2007): 67–80.

the study reveals that dictators are more likely in this situation to choose a better deal for themselves when its consequences for others are uncertain. Although this uncertainty can be resolved in a ‘costless’ way by clicking a button, most dictators who act selfishly choose to remain ignorant. Dana, Weber and Kuang argue that this demonstrates people ‘have an illusory preference for fairness’ and ‘dislike appearing unfair’.³⁷

There is some evidence confirming their hypothesis in real-world settings, although there is considerable scope for further empirical research along those lines.³⁸ We could, nevertheless, make some conjectures about its application outside artificial conditions. There are at least two reasons why, given what the study finds, epistemic avoidance is even more likely to take place in persons’ actual social and political interactions. These relate to the *process of acquiring information* and the *consequences that would follow* from the acquisition of information.

The study discussed here mostly pertain to avoidance of information that is easily available. The designated dictators need only click a button in order to unveil information about recipients’ pay-offs. Privileged social groups are rarely in that situation. Firstly, this knowledge is rarely available in one ‘source’ as a comprehensive bundle. Rather, we need to piece it together by engaging with a variety of sources. As Kai Spiekermann argues, this means that the epistemic avoidance we find in experimental settings ‘should be even easier in real-life interactions, where we make plenty of choices to avoid information’.³⁹ He argues that actual social life gives us plenty of opportunities for failing to find a relevant ‘piece’ of information about the impact of our practices on others’ circumstances: ‘Whether we read or not read a newspaper article, watch or not watch a TV programme, talk or not talk to an acquaintance—we take all these decisions on a daily basis, and often we have an inkling whether we can expect to learn something that might be ‘uncomfortable’ news for us.’ Moreover, our internalised beliefs and assumptions contribute to making ignorance hard to overcome. The cognitive tools people use to interpret their experiences of the world are themselves social productions, which are shaped by prevalent relations of power. These include the ‘background beliefs and the conceptual grid’ through which we ‘perceive and make sense of what they see, hear and read’.⁴⁰ Rather than updating our conceptual tools when confronted with

³⁷ Ibid., 67.

³⁸ Eleonora Freddi, “Do People Avoid Morally Relevant Information? Evidence from the Refugee Crisis,” *CentER Discussion Paper*, 2017-034 (2017). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3040531

³⁹ Kai Spiekermann, “Four Types of Moral Wriggle Room: Uncovering Mechanisms of Racial Discrimination,” in *The Epistemic Life of Groups: Essays in the Epistemology of Collectives*, ed. Michael S. Brady, and Miranda Fricker (Oxford: Oxford University Press, 2016), 184.

⁴⁰ Clarissa Rile Hayward, “Responsibility and Ignorance: On Dismantling Structural Injustice,” *The Journal of Politics* 79, no. 2 (2017): 405; Charles Mills, “White Ignorance,” in *Race and Epistemologies of Ignorance*, ed. Shannon Sullivan, and Nancy Tuana (Albany, NY: SUNY Press, 2007), 25.

empirical data which challenges them, we ‘interpret the data through the grid of the concepts in such a way that seemingly disconfirming, or at least problematic, perceptions are filtered out or marginalised’. Thirdly, stereotypes generated by unjust social structures impose cognitive costs even for conscientious actors who wish to act in an epistemically praiseworthy manner. Research demonstrates that such actors expend considerable cognitive effort in suppressing response-tendencies which are activated through implicit associations.⁴¹ These, then, are very different epistemic circumstances from the click of a button which is all one needs to reveal information about the disadvantage our actions impose on others in the experimental setting. Insofar as acquiring information in the real-world is costlier, the likelihood of epistemic avoidance seems even stronger there.

Note also a difference in the likely consequences of not engaging in epistemic avoidance. The experimental study discussed above pertains to avoidance that takes place while one is deciding some future course of action. At stake in the experiment is a promised sum of money which the dictator will have to forgo if she un-masked relevant information about its impact on others. In the real world, though, motivations for avoiding information apply to situated selves embedded within given social structures from which they benefit. Strategic avoidance does not just help retain those privileges in the future—although, that, too, is important. Rather, it also prevents disruption of the practices and habits that these structures entail. Some of these practices might be constitutive of our social identities. Consider, for instance, Jane, a white middle-class parent who moves to a suburb and sends her child to a racially exclusive school because of the greater economic opportunities it offers. She may not have acted in a racist manner towards anyone and may well prefer racially integrated schools. Nevertheless, she contributes to upholding a racially segregated system of education which distributed life chances unequally. Jane may consider herself a doting mother and take pride in what she does for her children. She may have accumulated savings over years to move to the suburbs for them. She has good reason to avoid confronting the implications of her actions for racially disadvantaged parents and their children. If she were to do so, she would face two further options: giving up her image of herself as a fair person, or reversing practices that are constitutive of her self-image as a doting mother. The experimental studies cited above appropriately point to epistemic avoidance as a way of avoiding dissonance reduction. My point is that this is even more likely in real world situations where the alternative is disrupting deep-rooted practices that are closely connected with one’s identity.

Epistocrats might respond by insisting that their proposals attempt to include only those persons who do not affirm false beliefs and avoid familiarising themselves with true ones. As a result, it is good for disadvantaged groups if epistemically incompetent

⁴¹ Jennifer A. Richeson and J. Nicole Shelton, “Negotiating Interracial Interactions: Costs, Consequences, and Possibilities,” *Current Directions in Psychological Science* 16, no. 6 (2007): 317.

persons within privileged demographic classes are disenfranchised. This will make it less likely that those in charge of decisions are people under the influence of false ideological beliefs. Those who are unable to engage in rational revision of their beliefs due to self-defence mechanisms are likely to lose the right to vote under an epistocratic regime. But I do not think this is an adequate response. This is because a competence test is unable to check for epistemic avoidance properly understood. To see why, consider two features of epistemic avoidance. Firstly, it involves escaping contexts or domains where one's beliefs might be subject to discomforting scrutiny. Epistemic avoidance does often imply that persons are unable to revise their beliefs since doing so puts them in a position of discomfort, as when they must acknowledge their undeserved privilege. However, avoidance is not always a matter of failing to secure the uptake of critical perspectives of disadvantaged persons. It often goes deeper—as when persons avoid conversations that interrogate or might potentially interrogate their privilege. Here, 'not needing to know' does not involve merely remaining unresponsive to contestation, but escaping contexts where one might be forced to engage in it. Secondly, and following from the first point, epistemic avoidance is compatible with moments of recognition of injustice. Persons who adopt this strategy can, nevertheless, from time to time, acknowledge the unjust nature of the structural processes from which they benefit. We may know fully well the magnitude and moral urgency of the refugee crisis in Syria, but let this recede into the background. If we were to, indeed, treat it with the urgency *we know* it deserves, this would demand radical changes in our practices. As a result, we often simply omit dwelling upon certain situations, and factoring them into our judgments about actions. This does not mean we do not know about them, or could not demonstrate knowledge when called to do so. But we choose to avoid reflecting upon these in a routine manner, especially when evaluating how we ought to act.

By focusing on epistemic obstacles imposed by privilege, my argument in this section has the benefit of avoiding the controversial attribution of self-interest that underpinned the 'perverse incentive' objection. I have suggested that what epistocrats lack is the motivation to engage in an inquiry about how structural injustice can be rectified. This is compatible with their acting in accordance with their conception of what is the best way of advancing the interests of disadvantaged persons. That is, they may see themselves as behaving in ways consistent with the demands of justice, but are simply unwilling to engage in an inquiry oriented towards what this requires. Consider, for instance, persons who engage in charity with the intention of improving the situation of persons for whose disadvantaged conditions they are (at least partially) responsible. Such persons see themselves as acting justly, perhaps even beyond what they are required to do. Yet, in many cases, they simply lack the motivation to try and understand the more complex political actions they ought to undertake in order to dismantle structural injustice. Self-interest does not play a role directly in determining

their behavior. Rather, it enters at a further level, insofar as beliefs about how to act are influenced by the need for epistemic avoidance.

The argument outlined here, therefore, connects two distinct lines of reasoning than often underpin the defence for democratic enfranchisement. The first suggests that enfranchisement ensures that persons can defend their interests against self-seeking behaviour on behalf of those in power. Without the franchise, such persons would be left defenceless in the political battlefield, allowing others to pursue their respective interests without constraints. The second suggests that enfranchisement is necessary not because of persons' self-seeking tendencies, but because of their epistemic gaps. Those in power would simply lack adequate insight into the interests of those who are excluded. Disenfranchised persons would be left unable to contribute to decision-making in ways that facilitate understanding of their interests. As we saw in Chapters 2 and 3, calls for greater expansion of the suffrage in the second reform act debates, and Ambedkar's insistence on descriptive representation for the Untouchables, drew on both kinds of arguments. However, there is a link between the two: self-interest can contribute towards, and reinforce, epistemic gaps. One's *interest* in not knowing about others' interests can facilitate *ignorance* about those interests.

5. The Argument from Deliberative Asymmetry

In the preceding section, I have demonstrated why the inclusion of disadvantaged groups in deliberation over their interests is necessary. The third section defended such inclusion by appealing to the necessary interlocutor principle. The fourth section went on to argue that that members of socially privileged groups were particularly less likely to access the interests of disadvantaged persons. Why would epistocracy affect a political system's capacity to satisfy the necessary interlocutor principle or mitigate epistemic avoidance? At this point, we can benefit from drawing on the insight of proponents of an expanded electorate in the second reform act debates, who insisted on closer scrutiny towards the *deliberative impact* of an epistocratic political arrangement.

As I argued in Chapter 2, the relationship between deliberation and voting power can be conceptualised in two ways. The first approach suggests that reduction in voting power does not block persons from contributing to the discursive process. On this account, then, disenfranchisement or the receipt of fewer votes merely deprives persons from taking final decisions on political issues. It does not hinder persons from influencing such decisions by contributing to deliberation on them. Against this view, one might insist that the reduction of voting power—either through disenfranchisement or by receiving fewer votes than others—lowers persons' ability to participate in political deliberation. In other words, loss of one's ability to contribute discursively is a necessary by-product of the exclusion demanded by epistocratic arrangements.

Why this might be the case, though, has not been adequately explored. In what follows, I examine two mechanisms that might underlie this view: the *strategic incentive effect* and the *devaluation effect*. I argue that the latter provides a more compelling approach towards understanding the nexus between voting power and deliberation.

5.1 STRATEGIC INCENTIVE EFFECT

Why, Landemore asks, would an oligarchy initially made up of a cognitively diverse set of decision-makers fail over time to retain the diversity available in the larger population? She argues that ‘absent democratic accountability and some form of influence of the larger public opinion on their decision process, the group of oligarchs has no incentive to maintain this initial degree of cognitive diversity’ (emphasis mine).⁴² In other words, decision-makers would fail to take what is epistemically valuable from those outside because there is no incentive for them to enrich themselves and avoid epistemic costs. When decision-makers are democratically accountable, they have a strategic incentive to engage with the wider population.

Epistemic avoidance means that privileged persons have good reason to not engage with those who are disadvantaged. Such disengagement becomes considerably easier under an epistocratic arrangement. This is because epistocracy precludes the possibility that those disenfranchised would have a decisive say in political decisions. This argument does not rely upon a view of epistocrats as self-interested. Epistocrats may find it easier to ignore disadvantaged persons not because doing so helps serve their own interests better. Rather, even well-meaning epistocrats, who wish to act in the interests of disadvantaged persons, would find it easier to ignore those who do not have a vote. If the disadvantaged had a vote, this would provide a reason for privileged persons to engage with them in order to persuade them to vote for better outcomes. In doing so, privileged persons would be more likely to engage with the claims of disadvantaged persons about their own interests. By contrast, epistocracy makes it less likely that this engagement would take place, by allowing epistocrats to bypass concerns of disenfranchised persons without having to worry that this would affect the realisation of their preferred decision. All else equal, then, epistemic avoidance is more likely to be exacerbated by epistocracy.

Note that this argument has its limitations. Enfranchisement can provide a strategic incentive for engagement only insofar as certain groups can influence electoral outcomes. Indeed, the importance of this point should not be underestimated. Even numerically small groups can become important depending on contingent features of a political system. In a contest with several candidates or parties, even relatively small groups can become a political salient force, forcing consideration with their claims. Further, it is possible to design democratic systems in a way that maximises such incentive, and, therefore engagement with different

⁴² Landemore, *Democratic Reason*, 107.

groups.⁴³ Nevertheless, there are limits to how much engagement a political system can induce by linking these to strategic incentives. Do we assume that where strategic reasons for such engagement do not obtain, persons' claims about their interests will fail to receive any consideration? We may not wish to take the argument so far. Rather, let us grant that though less likely, enfranchised persons will engage with disenfranchised persons, and listen to their claims about their interests. I argue that such deliberation is likely to be vitiated by the devaluation entailed by competence-based disenfranchisement.

5.2 DEVALUATION EFFECT

In our study of the second reform act debates, we noted that many proponents of an enlarged suffrage insisted that disenfranchisement constituted a 'stigma', or a mark of disrespect, that devalued workers. The very process of contestation over who ought to hold the franchise, in fact, played its role in constituting the excluded as political pariahs, unworthy of respect. It is worth pursuing the role such stigmatization can play in producing deliberative asymmetry between those enfranchised and those excluded from the vote. I argue that epistocratic disenfranchisement is likely to undermine the evaluation of disadvantaged persons' claims about their interests because of the epistemic categorisation or labelling that it involves. Such labelling is likely to vitiate deliberation over the interests of persons categorised as incompetent, or less competent than others by devaluing their discursive contributions.

The process of categorising persons involves paying attention to some features in a selective manner, sorting them along those rather than others. If every feature were incorporated in categorisation, then there would be as many categories as features, making categories altogether redundant. But in categorising persons as politically *competent* or *incompetent*, we are unable to track several relevant things. This binary is unable to account for the range of competencies and the degree to which these are present in persons. Suppose Alfie knows a lot about his economic interests and can make considerable contributions towards the formulation of fiscal policies. A competence test determines that Alfie is disqualified from voting because she lacks knowledge about the structure of government, and how representatives function within it. However, this determination is unable to track ways in which Alfie can contribute. It devalues her status as a contributor, classifying him as incompetent without sufficiently accounting for his ability to act as a knower in relation to economic policies.

Contrast the above case with the case of the partially competent driver. Suppose Bravo knows how to use a clutch and apply the brakes to a car. But he is hopeless at steering the car. A driving test that he must pass determines that he is unqualified to drive as a result of his inability to steer. Bravo's claim that he can, nevertheless, brake

⁴³ See Michael Rabinder James, "Diversity, Deliberation, and the Concepts of Constituency," *Polity* 40, no. 2 (2008): 229–37.

and accelerate is irrelevant. These competencies have no claim to recognition or value in the absence of the ability to steer. We are fully justified in discounting Bravo's knowledge-claims in those limited respects. Alfie's knowledge-claim about economic policies is not like useless like Bravo's one about the ability to apply brakes despite lacking other abilities needed to drive. It makes no sense to speak of braking independent of the ability to drive in a way that it is perfectly sensible to suggest that the assessment of economic policies is independent of the exercise of voting. Thus, the inability to vote as a result of lack of some competencies should not discount one's claim to knowledge in assessing economic policies.

The categorisation of persons as politically competent or incompetent would, therefore, be an epistemically inadequate exercise. One might concede that it fails to do justice to the wide range of competencies relevant to political judgment, but how does this affect the process of evaluating epistemic claims made by the disenfranchised? To see how, it is important to understand what the act of categorising involves. The standard understanding suggests that categorising involves identifying shared features in objects or persons, and grouping them according to these, differentiating them from things or persons that have other shared features. On this view, the act of categorising simply maps on to already existing features, and emphasises extant commonalities. However, this ignores ways in which the act of categorisation also structures our responses and preferences in relation to those objects. When I classify some apples as 'good' and others as 'bad', I make it likelier that persons would prefer the former rather than the latter. Thus, the very act of categorising persons according to their levels of political competence is a political intervention with consequences for how we engage with persons. That some groups of persons are widely known as 'incompetent' under the epistocratic regime is likely to vitiate deliberation with such persons.⁴⁴ The urgency given to their claims, the seriousness with which they are treated, and our evaluation of their validity, are likely to be undermined by the fact that their makers are deemed 'incompetent'.

Epistocracy does not need to conjure up the epistemically damaging consequences I have warned of. Disadvantaged groups are in any case susceptible to epistemic injustice, or the risk of harm in their capacity as knowers.⁴⁵ They suffer credibility deficits due to hearers' prejudices about their social identity. Epistemic labelling would further entrench, or worsen, epistemic injustices to which disadvantaged groups are already subject. Empirical research demonstrates how

⁴⁴ It is possible to devise schemes that do not admit such distinctions. For instance, lotteries have been advanced as way of enhancing the epistemic quality of decision-making assemblies. However, since they do not view some persons as more competent relative to others, urging the transfer of power to superior agents, I do not consider such proposals as epistocratic. One may view those admitted by a lottery as having achieved greater epistemic insight *after* participating in the assembly's deliberations, but this does not involve stipulating *prior* standards of competence which determine who could be included or excluded from the decision-making body.

⁴⁵ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007)

persons who hold prejudices are more prone to acting in discriminatory ways when they feel their views are objective.⁴⁶ Epistocratic categorisation is likely, therefore, to fuel biased judgments during engagement with disadvantaged groups.

The preceding comments have focused on ways in which epistocracy would affect others' engagement with persons it would disadvantage. A second way in which epistocracy is likely to affect deliberation is through its internal effects on disadvantaged persons. Firstly, being categorised in this way could lead disenfranchised persons to treat their own justified claims with less credibility than they actually deserve. As Miranda Fricker argues, 'if I am subject to suspicion, exclusion, even ridicule when I put forth my knowledge it in cooperative inquiry, then I may give up the belief, or the justification for it, in spite of my evidence.'⁴⁷ In other words, being stigmatised as incompetent can lead to epistemic injustice by an agent against herself, and not just from external others. Further, being stigmatised in this manner might have detrimental epistemic effects for a person even when she does not internalise the stereotypes they perpetuate. She might come to recognise that even her valid claims are dismissed because she is viewed as an incompetent agent. This might lead her to develop a 'thick skin' as a defence mechanism. But in doing so, she can isolate herself epistemically, making it harder to sift her justified claims from unjustified ones. The epistemic trust and perceived reliability necessary for changing one's mind is missing in such situations because of the agent's history of being unfairly marginalised. This can result in situations where disadvantaged actors hold epistemically inferior beliefs because they are deprived of an environment where they could subject them to fair assessment.

Further, epistemic labelling could affect an epistemic agent by stifling her *motivation* to engage in cooperative inquiry. If she internalises her own purported inferiority as an epistemic agent, she could lose the motivation to press her claims on others. Epistemic labelling can also sap one's motivation in another way. The stigma it perpetuates can be damaging to persons' sense of worth. They are likely to protect their self-esteem by devaluing the domain where they fare poorly.⁴⁸ That is, they may decide to disengage their sense of worth from achievement in that domain. But doing so harms their potential for achievement even further. Insofar as motivation is necessary for good epistemic performance, they could bind themselves to a feedback loop that perpetuates failure.

Jason Brennan has already responded to one version of such an argument. That argument urges that disenfranchisement commits an expressive harm by suggesting

⁴⁶ Eric Luis Uhlmann and Geoffrey L. Cohen, "I Think it, Therefore it's True": Effects of Self-Perceived Objectivity on Hiring Discrimination," *Organizational Behavior and Human Decision Processes* 104, no. 2 (2007): 207–23.

⁴⁷ Fricker, *Epistemic Injustice*, 49.

⁴⁸ Brenda Major and Toni Schmader, "Coping with Stigma through Psychological Disengagement," in *Prejudice: The Target's Perspective*, ed. Janet K. Swim, and Charles Stangor (San Diego, CA: Academic Press, 1998), 219–41; Claude Steele, A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance. *American Psychologist* 52, no. 6 (1997): 613–29.

that some persons are less worthy of our respect than others. Brennan suggests that the impact of epistocracy is limited in expressing disrespect for persons who warrant it *qua* voters. It does not follow from this that persons do not generally deserve equal respect. It is fallacious to infer from our judgment that they are incompetent voters that they are, therefore, of less moral worth. If such an inference is made, it is arbitrary. It relies on a contingent and implausible social meaning we attach to enfranchisement, where voting is wrongly considered a mark of dignity.⁴⁹ After all, such respect for persons could be expressed in other ways that do not involve subjecting them and others to negative consequences.

My argument avoids this objection by focusing narrowly, like Brennan, on what disenfranchisement expresses about persons' epistemic abilities in relation to politics, rather than their moral worth *per se*. Contra Brennan, I agree that disenfranchisement of person is likely to have consequences for how persons' moral worth is perceived. A spill-over effect from their status as political knowers to perceptions of their moral status is very likely. I also think it is unsatisfactory to claim a contingent relationship between political status and moral worth. If anything, this makes Brennan guilty of methodological duplicitousness, selectively viewing parts of the social world as contingent, and others as abiding. However, my case does not hinge upon the broader consequences of disenfranchisement for persons' moral status. Rather, my argument insists that *as a categorisation of what people know about politics*, the epistocracy's binary of 'competent' versus 'incompetent' is misleading. It imposes the label of 'incompetent' upon disadvantaged persons without doing justice to, and therefore, undermining their potential contribution as knowers.

Further, my emphasis on the devaluation effect does not appeal to any intrinsic harm of disenfranchisement for peoples' status as political agents. Melissa Schwartzberg makes such an argument when she urges that any departure from equal votes for all constitutes an epistemic injustice. She argues that this is because such departures fail to recognise our equal status as contributors to the deliberative process.⁵⁰ While I agree with Schwartzberg, my argument focuses elsewhere: on the *outcome* of inadequate epistemic labelling rather than why it is intrinsically harmful. This allows us, consistent with the aim of this chapter, to engage with epistocracy on its own terms—by appealing to the epistemically weak outcomes it produces.

6. Conclusion

This chapter has suggested that the epistemic case against epistocracy can shed its reliance on the 'best judge' principle. Instead, it is possible to insist that merely any group of persons ought to be included in deliberation over their own interests. Further, this chapter has underscored the need for inclusive deliberation by

⁴⁹ Brennan, *Against Democracy*, 127–30.

⁵⁰ Schwartzberg, *Counting the Many*, 111–18. Also see Christiano, *The Rule of the Many*, 74.

emphasising the distinctive epistemic obstacles faced by socially privileged persons. It argued that, in addition to the necessary interlocutor principle, privileged demographic groups are also subject to the challenges of epistemic avoidance, necessitating the deliberative inclusion of disadvantaged groups. In doing so, it brought together two arguments found in the case studies examined in the first half of the thesis: the first suggests that exclusion harms a group's interests by allowing others to freely pursue their respective interests; and the second suggests that exclusion harms a group's interests by hindering adequate insight into what such interests comprise. Finally, I have suggested that the kind of deliberation needed for adequate consideration of a group's interests is likely to be vitiated under epistocratic arrangements. The devaluation entailed by competence-based categorisation would threaten deliberation with persons excluded or disadvantaged in an epistocracy. These arguments, then, strengthen the epistemic case against competence-based exclusion from political power.

6

The Case against Legislative Office Qualifications

The right to vote is often grouped together with the right to hold public office. Both rights constitute aspects of political liberty in John Rawls's first principle of justice.¹ Similarly, Thomas Christiano argues that democracy 'involves *equality in voting power, equality of opportunities to run for office*, and ideally equality of opportunities to participate in the processes of negotiation and discussion that lead up to voting' (emphasis mine).² Robert Dahl, too, insists that the right to vote and eligibility for public office are part of the necessary conditions for a democratic regime.³ Yet, there remains, in many countries, a gap between who can vote and eligibility for public office. Whether or not this gap is normatively justifiable remains neglected.⁴

This chapter takes seriously the Indian Constituent Assembly's suggestion that equivalence between the right to representation, operationalised through equal suffrage, and the right to represent, in the form of unrestricted access to legislative office, is a 'superstition'.⁵ It examines how, if at all, competence-based restrictions on legislative office could be justified. Section 1 begins by distinguishing such restrictions from others commonly attached to legislative office. Section 2 outlines the epistocratic case for restricting legislative office only to competent actors. In Section 3, I explore how arguments for restrictions on legislative office are less compelling than those attached to competence-based qualifications for the franchise. Section 4 then demonstrates how, legislative office qualifications, like competence-based restrictions on the franchise, are ultimately self-defeating from an epistocratic perspective.

1. Pure Epistemic Qualifications: Some Distinctions Considered

¹ John Rawls, *Theory of Justice, Revised Edition* (Cambridge, MA: The Belknap Press, 1999 [1971], 53.

² Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford University Press: Oxford, 2008), 92–93.

³ Robert Dahl, *Polyarchy: Participation and Opposition* (Yale University Press, 1973), 3.

⁴ Notable exceptions to this have been Andrew Rehfeld, "On Quotas and Qualifications for Political Office," in *Political Representation*, ed. Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, Alexander S. Kirshner (Cambridge: Cambridge University Press, 2009); Jon Elster, *Securities Against Misrule* (Cambridge: Cambridge University Press, 2013), 141–42; Nenad Stojanovic, "Discrimination and Politics" in *The Routledge Handbook of the Ethics of Discrimination*, ed. Kasper Lippert-Rasmussen (London: Routledge, 2018), 348–60.

⁵ See Section 3.2.1 in Chapter 3

As I have indicated, legislative office qualifications (LOQs) remain largely understudied, and inadequately understood in normative legal and political theory. In this chapter, I wish to focus on what I call pure epistemic legislative office qualifications. I begin by distinguishing these from other kinds of qualifications, which, though they may have an epistemic dimension, are more plausibly justifiable on other, non-epistemic grounds. Although qualifications tend to exist for a wide range of public offices, this chapter examines, consistent with the focus of this thesis, only those attached to legislative offices. The typology offered is not an exhaustive one. Rather, it only aims at distinguishing epistemic LOQs from other restrictions with which these might be easily confused.

1.1 FACILITATIVE QUALIFICATIONS

Facilitative LOQs attempt to encourage some behaviour that is unrelated to the electoral contest or the office bearer's decision-making capacity. Here, legislative office serves as one incentive—perhaps among a range of other, non-electoral ones—that promote a certain or discourage some activity. For instance, in some Indian states, persons are disqualified from contesting Panchayat elections if they have more than two children or do not have a toilet in their home. The point of having toilets or less than two children is not that these facilitate better decisions by bearers of legislative office. Instead, these constitute behaviour that society wishes to promote or discourage within its members, which are unrelated to the electoral process or quality of office-holders' decisions. Such rules can rest, firstly, on the notion of the legislators as role models. Others are less likely to engage in the behaviour such rules attempt to encourage if they see that their elected representatives do not engage in it. In upholding the qualification about toilets, the Supreme Court of India argued along similar lines: 'Those who aspire to get elected to those civic bodies and administer them must set an example for others'.⁶ Secondly, such rules also serve an expressive function by highlighting the social desirability of the actions they attempt to promote. Here, the electoral process is one arena among others where society can express its approval or disapproval of certain actions. It provides a platform or source of dissemination for a community's stance on those actions. Thirdly, they attempt to guide the behaviour of candidates for legislative office as a subset of the whole community. Such rules attempt to promote certain behaviour among the wider

⁶ *Rajbala vs State of Haryana* on December 10, 2015, Supreme Court of India, para. 95. Bearers of public office often engage in actions even without such qualifications on grounds that they wish to set an example for their constituents. For example, politicians in the state of Mississippi, which has among the highest rates of obesity in America, started a bipartisan fitness campaign for members of the state legislature. In an interview on the campaign, Senator Burton stated that 'I just considered this a part of legislative duty to set an example for the state and say, we're not only talking about that and passing laws that might affect you so that you can lose weight and do things better, but we're going to show you we're going to do it, too'. In 'Mississippi Legislature Sheds 1,400 Pounds of Fat', National Public Radio, April 7 2010, <http://www.npr.org/templates/story/story.php?storyId=125676959>.

community, and LOQs serve as a way of encouraging that behaviour among one part of the community, namely candidates for legislative office. These qualifications then have value if they influence merely the behaviour of candidates without having any further impact on similar actions by the wider community.

It is possible to read disqualifications for those convicted of criminal offences as facilitative qualifications. On this reading, such rules can be seen as a way of expressing society's disapproval of criminal actions, and insisting that bearers of legislative office must set an example by having an unblemished criminal record. In some cases, even though convicted criminals are not prohibited from running for office, the law can disqualify those who commit electoral fraud or violate electoral law. Such disqualifications can be viewed as a way of encouraging compliance with fair electoral procedures, aimed at preventing behaviour like intimidation of voters or bribery of electoral officials.

1.2 PROTECTIVE QUALIFICATIONS

Protective qualifications serve to protect the performance of some role or function that has priority over running for or holding legislative office. In some schools, students are only permitted to contest elections if they have a certain level of attendance at classes and/or satisfy some threshold academic grade. This is not because their failure to satisfy these qualifications would inhibit their performance as student leaders. Rather, teachers may worry that contesting elections or holding office might affect their academic performance. Their judgment rests on the understanding that a student's academic life ought to have priority over her ability to contest elections or hold office. Note that priority here does not imply that the function demanded is a precondition for holding office. It is possible that students can serve as good representatives without having strong academic credentials. If anything, it might be the case that academically worse-off students are better placed to represent the wider student population compared to those who excel in their examinations. Still, good academic performance is seen as the proper role of the student, which must be discharged satisfactorily before they can take on office which could potentially interfere with its performance.

It is possible to read minimum age requirements as a form of protective qualifications. Indeed, one might view such qualifications as a way of enhancing the quality of political decisions, with age serving as a proxy for better epistemic ability. Alternatively, we might also see such qualifications as a way of protecting children from the electoral process or legislative office. We might worry that the process of contesting elections might expose children to acrimonious environments, put them under a spotlight and potentially make them subjects of criticism faced by candidates for legislative office. Similarly, holding office might result in heightened visibility for their actions, including those performed in their private lives. One might insist that these circumstances could negatively affect the developmental process appropriate

for children, or vitiate the kind of childhood experiences we expect them to have. In other words, age qualifications attempt to protect children from the political process, rather than shielding political decision-making from their alleged incompetence.

1.3 CORRESPONDENCE QUALIFICATIONS

Such qualifications aim at ensuring similarity between constituents and candidates along some dimension. As Andrew Rehfeld argues, they attempt to ‘maintain correspondence between representatives and their electoral constituents’.⁷ Correspondence LOQs can be applied across all constituencies. For instance, citizenship requirements, where they exist, hold for all constituencies, requiring every candidate for some office to either citizenship of a particular country. Similarly, there can be residency requirements insisting that every candidate must have resided in the constituency from which she seeks election for a given period of time. Alternatively, there can be constituency-specific qualifications, which aim at ensuring correspondence between members of some, but not all, constituencies and their representatives. For instance, a constitution could demand that an area populated by indigenous people must be represented only by an indigenous legislator. It is worth distinguishing affirmative action policies from correspondence qualifications. There might be constituencies where only members of a certain group can be elected even though these are comprised of voters from other groups as well. For instance, India has reserved constituencies, where only members of socially disadvantaged groups (known as ‘Scheduled Castes’) can be elected, but voting in these is not restricted only to Scheduled Caste voters. Rather, members from all social groups, including socially advantaged ones, must vote for a Scheduled Caste candidate in reserved constituencies. Although this policy establishes affirmative action for Scheduled Caste legislators, it does not aim at establishing correspondence between the representative and her constituents.

The underlying idea behind correspondence LOQs is not that they would contribute towards better outcomes—although one might also defend them in that way. Rather, voters might insist that their representatives ought to correspond to them in a relevant respect even if dissimilarity helps produce better outcomes. The driving consideration here is one of self-determination. One might concede that external governing bodies, such as the World Bank may perform better than citizens of one’s own country, but nevertheless, insist that a government must be made up of compatriots. Residency qualifications could also be defended on similar grounds. Although non-residents might legislate better on behalf of a constituency, one might insist that self-determination requires a representative belonging to one’s local community in the law-making process.

⁷ Andrew Rehfeld, ‘On Quotas and Qualifications for Political Office’, in *Political Representation*, ed. Ian Shapiro, Susan C. Stokes, Elisabeth Jean Wood, Alexander S. Kirshner (Cambridge: Cambridge University Press, 2009).

1.4 EPISTEMIC QUALIFICATIONS

Epistemic LOQs aim to ensure the selection of competent decision-makers. Such qualifications attempt to obtain decision-makers who possess some capacity, skill or body of information relevant to their role. Some countries demand a certain degree of educational attainment from bearers of legislative office. In Pakistan, for instance, Parvez Musharraf modified the electoral law, requiring members of the national assembly to hold a bachelor's degree or evidence of higher education.⁸ In India, two states enacted laws whereby members of local councils must hold certificates for high school education. Here, success in formal education serves as a *proxy* for decision-making capacity required by bearers of office. In other countries, members must speak or read and write a certain language if they wish to become members of Parliament. Such qualifications can be seen as attempting to secure *preconditions* of that office. In order to legislate, members must be able to engage in debate, as well as adequately read legislation in a given language. As such, demanding a minimal degree of proficiency in that language is essential if they are to perform that function well.

Could such qualifications not count as facilitative rather than epistemic? That is, one might suggest that learning the national language or holding a graduate degree could count as the sort of behaviour one wishes to encourage whether or not this affects the quality of legislative outcomes. The benefits of such restrictions are exogenous to the legislative process, and there is independent value to having a body of citizens who know the national language or have a college education. However, this would ignore an important distinction between epistemic and facilitative qualifications. Proponents of epistemic qualifications could insist on their imposition even in situations where many persons do not have access to the resources they need to satisfy these. For instance, one might insist on educational qualifications even if widespread access to schools and universities is absent. The epistocrat might insist that decision-makers must be competent in their role whether or not they had access to education. Indeed, it is unfair and regrettable that they did not have access to education. But those underlying injustices ought to be corrected, rather than allowing persons to take up offices for which they are unsuited. In this respect, epistemic qualifications differ from facilitative LOQs. If the point of an LOQ is to encourage persons to undertake a certain action, then those qualifications lose their purpose if persons do not possess the ability to perform that action. For instance, while disputing the 'toilet qualification' in India, petitioners insisted that many persons did not have the resources required to build toilets in their homes.⁹ As such, it was unfair to

⁸ Article 8A of the Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2002).

⁹ *Rajbala vs State of Haryana*, para. 93.

penalise them for failing to do so and impose qualifications aimed at encouraging them build toilets.

2. The Case for Epistemic Legislative Office Qualifications

In his comments on public office, Rawls argued that ‘To be sure, there may be qualifications of age, residency, and so on. But these are to be reasonably related to the tasks of office; presumably, these restrictions are in the common interest and do not discriminate unfairly among persons or groups in the sense that they fall evenly on everyone in the normal course of life’.¹⁰ Here, Rawls emphasises two kinds of constraints. Firstly, that there ought to be some reasonable relationship between the qualification and the tasks of the office. Secondly, such restrictions must not fall unevenly on certain persons or groups. In this section, I examine whether epistemic qualifications be justified as bearing a nexus with legislative office. The next section interrogates the second constraint, exploring whether the disparate impact of LOQs is indeed a problem.

One might insist that there are distinctive reasons to worry about the competence with which legislators exercise judgment. Unlike voters, legislators exercise their judgment in the determination of decisions. Their proximity to ultimate decisions could lead to the insistence upon greater competence from legislators than that demanded from voters. Indeed, decisions taken by legislators are reversible. At the same time, we attach value to a relatively stable system. Laws regulate persons’ conduct and expectations for how we behave towards each other. We may also worry about the opportunity costs involved in making laws that are later struck down. Legislation is ordinarily the outcome of a demanding process, which involves advocacy, scrutiny and deliberation by actors across a democratic system. Although inferior legislation might be later reversed, the degree of effort and resources actors put into its production means that we ought to avoid this when possible. How does this concern with greater competence translate into demands for epistemic LOQs? In this section, I examine three models of representation, and how an epistocrat might approach them. My aim here is to outline the epistocratic case for restricting legislative office to those deemed competent, before offering a critique of such qualifications in the following sections.

2.1 POPULIST APPROACHES TO REPRESENTATION

Populist approaches insist that legislators should enact the wishes of their electors. These conceptions are grounded in principles like equality of interests, anti-elitism

¹⁰ Rawls, *Theory of Justice*, 196.

or responsiveness to popular wishes.¹¹ The primacy of such principles demands that legislators cannot disregard voters' preferences by appealing to some objectively higher values. On the narrow populist approach, constituents extract a promise from the legislator at time T1 (the election) with respect to how she would act at time T2 (the governing period). Voters are enabled to enforce such promises by means of sanctions and rewards at time T3 (the next election). This model of representation, however, runs into several problems. Voters ordinarily do not hold meaningful or well-formed preferences on all matters at the time of an election. More importantly, for an epistocrat, this approach has little promise, since the epistemic priority of decisions must take priority over principles like non-elitism or responsiveness to popular wishes. Equal consideration of interests does not require responsiveness to electors' wishes. Rather, it demands adequately competent political legislators who are informed and able enough to ensure genuine consideration of everyone's interests.

Against this view, Andrew Sabl advances a broader populist approach, which attempts to give greater room to legislators' judgments. Sabl insists that even the ugliest prejudices that constituents hold must have some influence on legislation. This insistence stems from the belief that 'everyone's ethical character and way of life is roughly comparable, in terms of political standing and assumed powers of judgment'.¹² Giving voters' preferences some weight, then, is a matter of personal respect. If people feel strongly about something, then ignoring their views on that subject is deliberately to cause them pain and to say that their preferences do not matter. Like the narrow approach, the broad populist approach insists that voters' preferences ought to have salience when it comes to decision-making. However, Sabl also insists that legislators ought to be creative in crafting policy and political solutions. They must not demonstrate slavish accommodation to what is touted as public opinion. Instead, their stance should be one of creative, sophisticated responsiveness. They can take principled positions and address voters' resentment through rhetoric, make up for unpopular stances by taking popular stances on other issues, or simply wait out a mood of prejudice that is fleeting. 'The legislator's function involves, then, as much room for nobility as the circumstances allow and the legislator's own talents win for him', Sabl argues.¹³ As such, this approach allows greater flexibility for the representative than the narrow populist approach.

But the broad populist conception, too, is unacceptable from an epistocratic perspective. Its underlying principle of respect for voters' equal standing and respect for their (mostly incompetent) judgment appears misguided to the epistocrat. Like the narrow approach, the broad perspective still gives far too much salience to voters' preferences based on normative principles which rest on false empirics. For the

¹¹ Andrew Sabl, *Ruling Passions: Political Offices and Democratic Ethics* (Princeton University Press, 2009), 146.

¹² *Ibid.*, 155.

¹³ *Ibid.*, 167

epistocrat, then, any model of legislation must allow far greater freedom for competent legislators to take political decisions untethered by the wishes of incompetent voters.

2.2 THE ANTICIPATORY MODEL

Next, it is worth turning to another approach to representation, the anticipatory model. This approach views the representative at Time 2 (the governing period) as acting upon beliefs which she thinks electors at Time 3 (the subsequent election) could come to endorse. This provides a more flexible approach to representation than the populist approach, which tethers legislators to beliefs which constituents hold at Time 1 (the initial election). The anticipatory model instead urges that legislators ought to have some leeway when they act at Time 2. In doing so, it carves out some room for legislators' independent judgment rather than seeing representatives as mere intermediaries for carrying out their constituents' wishes. Indeed, there are limits to the exercise of such judgment. Although elected representatives have leeway, their actions are ultimately constrained by what they think their electors could come to endorse at the subsequent election.

The intervening period between Time 1 and Time 3 (the initial and subsequent election) offered by the anticipatory model is significant from a deliberative perspective. It 'becomes filled with reciprocal attempts at the exercise of power and communication, much of it instigated by the representative'.¹⁴ This gives legislators an opportunity to bring about a transformation of otherwise uninformed or unstable preferences that their electors might hold at Time 1. The anticipatory model, then, emphasises the pedagogical role of the elected representative: 'The characteristic work of democratic representatives includes 'teaching' citizens by deliberating on their behalf, offering descriptions of, and prescriptions regarding political issues. In this way, representatives properly help citizens frame important policy issues.'¹⁵ Against this view, Andrew Sabl insists that respect for the character of ordinary people means that legislators should not expect to educate the electorate. To assume that legislators must play this pedagogical role offends against democratic attachment to majority rule and its underlying insistence on the equality of moral character of all persons.¹⁶ For an epistocrat, however, affording legislators such a role is not a problem insofar as there is no presumption of respect for electors' preferences. Rather than worrying about disrespect for their preferences, we ought to concern ourselves with transforming these in ways that result in epistemically superior political outcomes.

Unlike the populist approach, the anticipatory model of representation gives room to representatives' independent judgments about policy issues. As previously indicated, the legislator is constrained in acting upon these insofar as voters'

¹⁴ Jane Mansbridge, "Rethinking Representation," *The American Political Science Review* 97, no. 4 (2003): 517

¹⁵ Suzanne Dovi, *The Good Representative* (Wiley-Blackwell: Arizona, 2012), 135.

¹⁶ Sabl, *Ruling Passions*, 162

preferences at Time 3 hold weight. However, the opportunity afforded by the intervening period serves precisely to help legislators persuade voters about the justifiability of their own superior judgment. If legislators lack better judgment, they fail to utilise this opportunity offered by the anticipatory model. The epistocrat might insist that we cannot trust ordinary voters to elect persons who possess a minimum degree of competence. Voters' incompetence means that we need epistemic LOQs in order to guarantee that legislators' judgments satisfy a threshold level of competence. Of course, even a competent legislator might pander to popular judgment rather than pursuing her own judgment. She might find it much easier to give in to uninformed voters rather than undertaking the more demanding task of convincing them why their preferences are mistaken. Qualifications for office, then, can only make better outcomes more likely without guaranteeing that this would be the case.

2.3 THE GYROSCOPIC MODEL

I now turn to a final model of representation, which Jane Mansbridge calls the gyroscopic account.¹⁷ Here, voters select a representative who can be expected to act in the manner they approve without any external incentives. The representative acts like a gyroscope, rotating on her own axis, maintaining a certain direction, and pursuing certain built-in (but not fully immutable) goals. She acts only for 'internal' reasons and is accountable only to her own beliefs and principles.¹⁸ This model conceptualises the role of the voter rather differently compared to previous accounts examined here. Voters affect political outcomes not by affecting the behaviour of the representative, but by selecting and placing in the political system representatives whose behaviour is to some extent predictable based on their observable characteristics. In selecting appropriate representatives, voters look for actors with whom their objectives are aligned. Such alignment can take place on the high ground of similar understandings of what is best for the nation as a whole. But alignment of objectives is also possible at narrower levels, for instance, on what is best for particular individuals or communities like farmers or miners.

The precise relationship between legislators' actions and citizens' policy preferences in the gyroscopic model remains unclear. *Once elected*, legislators have considerable discretion in the policies they enact. Unlike other models of representation, they are not tethered to their constituents' wishes or anticipated reactions to their decisions. The gyroscopic model insists that we ought to dispense with the emphasis on sanctions by voters: 'After the selection, the self-propelled machine need have no subsequent relation to the voter'.¹⁹ Gyroscopic representatives, then, exercise considerable independent judgment. Mansbridge quotes an elected

¹⁷ Mansbridge, *Rethinking Representation*, 520.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 521

representative who appropriately summarises this aspect of gyroscopic representation: ‘To me, representative government means you hire a guy to use his own judgment; and if you don’t like what he does, you fire him. But you don’t keep after him all the time. If it isn’t my function to use my judgment, then what the hell is my function? And if that’s not my function, I don’t want the job’.²⁰ Once elected, legislators are not just self-reliant, but they are also non-responsive to sanctions. They are guided by their own principles, rather than the threat of removal from office. They are happy to lose a chance at re-election if avoiding this involves giving up on core principles. Gyroscopic representatives, then, have greater room for independent judgment than they would under the anticipatory model. There, legislators are untethered from constituents’ wishes at the time of the initial election but are nevertheless constrained by beliefs about what they can bring their constituents to endorse at the subsequent election. By contrast, gyroscopic representatives do not worry about sanctions to which representatives might subject them for their actions.

However, *during the process of selection*, citizens can exercise influence over the direction of policy decisions. When screening for good representatives, they may consider policies that a legislator could be expected to enact. They do not later monitor enactment or hold a representative accountable for departing from their expectation. But the need to do so may have been eliminated by the act of selecting legislators who predictably act in ways the constituents hoped they would at the time of the election. Indeed, Mansbridge points to ways in which constituents can screen a representative without having to predict her policy preferences, and, therefore, assess which policies they prefer. Firstly, voters can select representatives based on intrinsic motivation, or character.²¹ The less they know about policies, the more rational it is for voters to select a representative on the grounds of her character. Secondly, voters can also select representatives by ‘predicting an inner constellation of values that is, in important respects, like the constituent’s own’.²² Voters do not screen representatives by predicting their behaviour or preferences on particular policies. Instead, they assess whether or not candidates for office share their overarching values, and would use their own self-reliant judgment for realising those values.

The gyroscopic model, then, at once offers the possibility of (1) self-reliant judgment by legislators (2) that is non-responsiveness to sanctions, but (3) for which the tune has been set by voters at the time of the election. From an epistocratic perspective, the first two features seem to be core strengths of this model. Together, they facilitate the selection of representatives who ‘think more carefully than they [voters] about ends and means but also to negotiate more perceptively and fight more

²⁰ Jane Mansbridge, “A “Selection Model” of Political Representation,” *The Journal of Political Philosophy* 17, no. 4 (2009): 379

²¹ *Ibid.*, 381

²² Mansbridge, *Rethinking Representation*, 521.

skillfully than constituents have either the time or the inclination to do'.²³ Mansbridge insists that this need not result in a hierarchical view of the representative process.²⁴ Instead, her approach relies purely on the idea of a division of labour rather than a priori competence of individuals. The egalitarian version of the gyroscopic model emphasises likeness and resemblance between constituents and their representatives as a way of ensuring aligned objectives. Against this, one might adopt a more elitist model, whereby self-reliant representatives, unresponsive to sanctions, stand above their constituents by way of their greater competence.²⁵ That is, the epistocrat might attempt to develop the gyroscopic model in ways conducive to his normative theory. On the epistocratic version of the gyroscopic model, voters ought to select the elevated few amidst them rather than those who resemble them. Such resemblance travels alongside epistemic deficiencies, and would, therefore result in poorer political outcomes. They should select a representative who differs from them by way of her greater competence but still understand their interests.

The third feature presents the gyroscopic model's Achilles heel from the epistocrat's viewpoint. Insofar as voters retain the ability to set the direction of gyroscopic representatives' action, the threat of epistemically inferior outcomes persists. For her part, Mansbridge attempts to reduce the epistemic demands made from voters by suggesting that assessments of candidates' character constitute an element in the selection of representatives. She argues that 'Citizens may also want to choose "a good man" or "a good woman" in part because they trust their own capacities, honed over a lifetime of social interaction, to choose well on this dimension'.²⁶ The epistemic capacities needed for such judgment, then, are universally available, and do not require any special expertise. Yet, for the epistocrat, this is insufficient in facilitating epistemically better outcomes. Legislators with socially desirable traits and civic virtues can lack the technical expertise needed to take good decisions. If anything, their zealotry and quest to do good for the country might actually be harmful if accompanied by incompetence.

To avoid the difficulty discussed above, an epistocrat might insist on competence-based LOQs. This would ensure that the independent judgments that gyroscopic representatives rely upon satisfy a minimal threshold of competence. It continues to let constituents influence the direction of political outcomes but establishes a safety net by preventing grossly incompetent actors from holding office. It institutionalises what I have called, the epistocratic approach to gyroscopic representation, where constituents elect the elevated few among them, who act in a self-motivated manner in order to pursue goals they share with their voters. LOQs reject what a democrat like Mansbridge insists is one of this model's strengths, namely, its non-hierarchical

²³ Mansbridge, *Rethinking Representation*, 515

²⁴ Jane Mansbridge, 'Clarifying the Concept of Representation', *American Political Science Review*, Vol. 105, No. 3 (2011): 623.

²⁵ *Ibid.*

²⁶ Mansbridge, *A Selection Model*, 381.

nature. She suggests that gyroscopic representatives see themselves ‘like’ their constituents with in their demographic characteristics, political attitudes, or both. From an epistocratic perspective, such similarity is undesirable insofar as it entails poor epistemic ability. Competence-based LOQs can ensure that legislators depart from their constituents with respect to their capacity for good decisions. To that extent, it wedges a gap between voters and representatives, precluding too much likeness. At the same time, voters can still select representatives most similar to them above this threshold requirement.

This emphasis on greater competence on the one hand, and proximity to one’s constituents might appear contradictory. But empirically, there are instances where, even without such qualifications, gyroscopic representatives attempt to highlight both dimensions of their leadership. Take the case of candidates from disempowered communities who point to their university education as proxies for their competence. They attempt to signal to their constituents that *qua* member of the community, they understand their interests, while at the same time, possessing greater insight into the decisions required for their pursuit.

3. Questioning the Need for LOQs

Having outlined the normative case for LOQs, I wish to highlight why, in some ways, the need for restrictions on office is less compelling compared to the case for restrictions on suffrage. My discussion in this section is necessarily short since the case against competence-based LOQs does not rest on the argument outlined here. Rather, my aim here is twofold: first, to bring into doubt the pressing need for restricting legislative office to those deemed competent; and second, to point towards the kind of questions we ought to ask once such restrictions have been deemed unjustified. I suggest that circumstances which ordinarily trigger calls for restrictions on the suffrage do not obtain in the same manner with respect to legislative bodies. Much of the ignorance among voters has been attributed to what we could call the ‘scale problem’ of democracy. The large size of a mass electorate contributes to public ignorance in at least two ways: by weakening relations of *accountability* and by fostering poor *learning* among voters. I argue that the relatively smaller size of representative assemblies allows them to mitigate both these problems to a large extent.

3.1 WEAK ACCOUNTABILITY

By accountability, we mean a relationship where an actor A is accountable with respect to some domain D to some account-holder H (which might be an individual or institution) that can require A to inform and justify her conduct or judgment concerning D.²⁷ Accountability in the democratic process can be valued for at least

²⁷ This is based on the definition offered in Mark Philp, ‘Delimiting Democratic Accountability,’ *Political Studies* 57, no. 1 (2009): 32.

three distinct reasons. First, it can play an important role in securing responsiveness to preferences. It can ensure, for instance, that elites' actions correspond to preferences citizens hold, rather than the interests of other actors such as corporations or international organisations. Second, accountability is understood as promoting decision-making on the basis of shared reasons rather than narrow, self-seeking ones. Having to account for one's actions to others facilitates having to defend one's actions on grounds acceptable to them rather than appealing to their role in promoting one's own interests. Third, accountability can also have an epistemic dimension: it can facilitate decision-making on the basis of epistemically sound beliefs. Presently, I am concerned with this third dimension of accountability and how small deliberative bodies compare with the wider electorate in this limited respect.

How can accountability serve an epistemic purpose? Under favourable conditions, account-holders can facilitate the improvement of actors' beliefs. Having to justify one's decision to some individual or group means that one is more likely to invest in acquiring sound information. Indeed, the epistemic potential of accountability is reduced to the extent that the account-holder cannot sanction the actor for the content of her account. Yet, the very process of having to account for one's beliefs can give an actor the motivation to improve one's beliefs than if one could hold those beliefs privately without having to account for them. Further, account-holders can help us better understand gaps that exist in one's knowledge on some issue. They can facilitate the contestation of an actor's position, helping weed out good from bad arguments. For accountability to perform an epistemically positive role, however, at least three conditions must obtain:

(i) The Acquisition Condition: First, H must be able to require A to give an account of her decisions or judgment with respect to D. If H is simply unable to get A to offer an account, then we cannot say that A is accountable to H. Indeed, there might be cases where H is entitled to an account from A, but is unable to acquire this because A is indisposed to provide one. In such cases, we might suggest that A is *de facto* unaccountable to H. H must have some power, formal or informal, to actually acquire an account from A about her decisions or conduct. Note also that this power is limited to the acquisition of an account; an account-holder may be able to obtain an account from some actor but not have the power to sanction her for the content of that account. Accountability, though weakened, is not impossible in the absence of sanctioning power.²⁸

(ii) The Capacity Condition: Further, H must know enough about D in order to hold A accountable for her beliefs concerning D. I might have the power

²⁸ *Ibid.*, 35-6.

to get some actor to justify her beliefs but stand unable to help improve the quality of those beliefs because my own knowledge about the domain in question is limited. The actor in question would not have to put any epistemic effort if she knew that I myself have little knowledge to question her account. Further, she would not benefit from my alerting her towards gaps in her account. The capacity condition raises further questions about how much account-holders need to know about the issue concerned in order to hold some actor accountable. In any case, it is reasonable to assume that, for accountability to have a positive influence on the quality of an actor's beliefs, account-holders must have a threshold level of epistemic capacity in the domain in question.

(iii) The Tracking Condition: H must have the resources attend to the account offered by A of her decisions or with respect to D. I might fail to hold an actor accountable despite having adequate knowledge of the domain concerned and the power to obtain her account if I do not have resources, such as time, to attend to that account. Consider, for instance, a regulatory pharmaceutical body. This body may have the scientific expertise to judge companies' research and also have the power to get them to submit their research for its judgment. However, suppose the regulatory body is understaffed and overwhelmed by the number of research papers it receives every year. For many companies, this regulatory body might fail to discern whether or not their research adheres to appropriate standards despite having expertise on what those standards are.

To what extent can *voters* satisfy the above conditions for holding each other accountable? In the first instance, we may worry that voters do not typically have the ability to obtain justification from each other about their respective votes. In response to this worry, one could try and design democratic systems in a way that made them likelier to satisfy the acquisition condition. Requiring citizens to vote in an open ballot rather than in secrecy could, for instance, encourage them to offer justification for how they voted. Others would know how they cast their vote and could hold them accountable for their decision. But this appears too hasty. Even if we dispensed with the secret ballot, given the volume of votes revealed, every voter would likely be held accountable only by others within his or her social circle. Persons outside this circle would have little knowledge of her vote, let alone the ability to acquire an account for why she voted in that manner. Both, the power to obtain an account, and to track others' accounts, is limited to a narrow group of persons.

Suppose we were to promote the satisfaction of the acquisition condition by establishing a citizens' review commission comprising political experts who, together, covered all domains pertaining to a given election. Let us assume this commission is

empowered to demand an account from every citizen for their vote. Every voter would have to upload a video on the internet offering justification for the manner in which he or she voted. Even though, in this scenario, the acquisition and epistemic conditions could be satisfied, the commission would simply be unable to track every voters' justification and understand his or her beliefs. As such, in large scale democracies, accountability is likely to fail even if we found ways of establishing epistemically sound account-holders and empowering them to obtain justifications from voters.

In the previous example, we assumed the presence of an epistemically sound account-holder. But failure to satisfy the tracking condition can reinforce failures with respect to the epistemic condition between mutually accountable actors. Let us suppose there are two actors, Adam and Becky, who are both accountable to each other for their beliefs. They both offer an account of their judgments through a video blog. Neither, though, has the ability to download a video and listen to the other person's account. Since Adam is unable to track Becky's beliefs, this is likely to negatively affect the quality of Becky's beliefs. Becky can hold her beliefs privately, without having these subject to critical scrutiny. She loses the opportunity to test new lines of argument, and have gaps in her reasoning exposed. All things equal, if accountability promotes the quality of one's beliefs, then not being accountable would make worse beliefs likelier. But if Becky's beliefs are epistemically unsound, then this also makes it likelier that Adam would hold poor beliefs. Insofar as the quality of Adam's beliefs depends at least partly on being held accountable by an epistemically competent agent, it is negatively affected when Becky's beliefs are unsound.

One might now insist that even if mutually accountable actors have the ability to obtain justification from each other, and are able to track each other's beliefs, they must nevertheless know enough about a domain for them to have a positive impact on the quality of their beliefs. Suppose Adam and Becky figured out a way of downloading each other's videos but are both similarly ignorant about the domain in question. They would, at best, fail to recognise their respective epistemic deficiencies, and at, worst, reinforce them, rendering both worse-off. Accountability by itself cannot ensure appropriate beliefs. However, all things equal, actors in smaller deliberative bodies are more likely than large groups of voters, to be accountable for their beliefs. Unlike masses of voters, participants in small bodies are better able to acquire and track each other's beliefs, satisfying at least two major conditions for epistemically beneficial relations of accountability.

3.2 POOR LEARNING

In my comments above, I emphasised how the epistemic returns of better accountability rely on sufficient epistemic capacity on behalf of account-holders. How do legislative assemblies compare with the larger mass electorate in bringing their

participants up to a threshold level of capacity, and satisfy threshold informational requirements?

We could try and mitigate ignorance in two ways: first, by providing participants with the relevant information they require, and second, by encouraging them to engage in deliberation over the information relevant for their decisions. It is likely that any attempt at addressing ignorance would require a combination of both strategies. I begin by demonstrating the first of these. It is worth recalling that information is not equitably distributed across different demographic groups. It is no coincidence that its distribution tracks social and economic inequalities. This is in large part because of structural barriers that some groups face in acquiring information relative to others. These include, among other things, the dominant language of political discourse, which can reduce opportunities for acquiring information available to different linguistic groups. Further, the medium through which information circulates in a society can be unequally accessible, as when some groups have less access to digital technologies. Moreover, prior exclusion from the political process due to social and economic disadvantages may prevent members of some groups from having insight into finer details of that process. In other words, strategies aimed at mitigating ignorance must pay attention to differential informational needs across various groups. It seems easier to facilitate learning in smaller groups, which are better placed to consider varied needs, and plan efficiently, to bring all participants up to an adequate information threshold.

A second way in which we could help mitigate ignorance is by facilitating deliberation among decision-makers. This is particularly crucial once we acknowledge the limitations that attend any attempt to ‘provide’ decision-makers with information. After all, those tasked with offering such information, too, can have cognitive limitations, and cannot be expected to offer the complete range of information that decision-makers might require. Further, even those who provide information can disagree among themselves about the validity of particular pieces of information, and deliberation may be required to settle contentious claims. Finally, decision-makers, too, might dispute the information offered to them. They may also, in the course of their deliberations, expand the scope of what constitutes relevant information with respect to a given issue. Indeed, neglecting the salience of this contestation would mean treating political ‘facts’ as apolitical data, and decision-makers as its passive consumers. So, deliberation among participants is an important aspect of ensuring that decision-makers are adequately informed to perform their task competently.

Robert Goodin and Simon Niemeyer, though, deny that deliberation among decision-makers has much epistemic value.²⁹ Their argument derives from observations from a study of a citizens’ jury in Australia, tasked with discussing policy

²⁹ Robert E. Goodin and Simon J. Niemeyer, “When Does Deliberation Begin? Internal Reflection versus Public Discussion in Deliberative Democracy,” *Political Studies* 51, no. 4 (2003): 627–49.

options for a contentious road, the Bloomsfield Track, running through the Daintree Rainforest in Australia. The jury was tasked with determining how to balance community access with environmental concerns for the rainforest and coastal reef threatened by the track. Although the details of the jury and its operation are not significant here, what matters most is the finding that its members changed their minds mostly before they had the opportunity to engage with each other. Initially, the jurors had been worried about the impact of the Bloomsfield Track on the nearby coral reefs, but midway through the jury process, their concerns had been allayed. Further, jurors initially thought that the track was important as an access road for inhabitants of remote northern towns, but their worries, too, dissipated at the halfway mark. Goodin and Niemeyer claim that:

The simple process of jurors seeing the site for themselves, focusing their minds on the issues and listening to what experts had to say did virtually all the work in changing jurors' attitudes. Talking among themselves, as a jury, did very little of it.³⁰

In other words, much of the decision-making happened during what the authors call the 'information phase', as opposed to the 'discussion phase', where jurors deliberated on the evidence among themselves.³¹ Goodin and Niemeyer suggest that this finding underscores the irrelevance of deliberation among decision-makers. It allows, as Robert Goodin, has previously argued, a way around the problem of conducting deliberation in 'large-scale mass societies', where the ideal of public discussion is not feasible.³² Instead, the authors argue, we ought to focus more on 'deliberative democracy within', a process of internal reflection where citizens, once presented with appropriate evidence, weigh reasons for or against a particular course of action without having to talk among themselves about it.³³

There are good reasons, though, to suspect that collective deliberation remains important even once decision-makers have been provided with information relevant for their decisions. In the first instance, the study on which Goodin and Niemeyer rely does less to prove their argument than they suggest. This is because the 'information phase' and the 'discussion phase' were hardly discrete stages of the wider exercise. Rather, as they concede, 'much of the work of the first phase was done discursively'.³⁴ Witnesses who gave their statements were interrogated, and the jurors discussed, both, their testimonies, as well as the kind of questions they wished to pose to witnesses. Further, the authors' proposed alternative, 'deliberative democracy within' seems unsuited for issues that are vulnerable to what I have called 'epistemic avoidance'. As I argued, such avoidance is consistent with knowledge of a

³⁰ *Ibid.*, 641.

³¹ *Ibid.*, 633.

³² Robert E. Goodin, "Democratic Deliberation Within," *Philosophy & Public Affairs* 29, no. 1 (2000): 82.

³³ Goodin and Niemeyer, *When Does Deliberation Begin?*, 641–44.

³⁴ *Ibid.*, 633.

given issue, while failing to factor it into one's considered judgments. Merely being presented with relevant evidence seems insufficient in such cases. Deliberation with others has the virtue of bringing us face-to-face with persons whose concerns we otherwise have good reason to avoid weighing in our internal reflection.

Deliberation aimed at tracking relevant information, then, cannot simply be monological. Rather, there are distinct virtues to actual collective deliberation with others. This, however, brings us back to Goodin's concern that such deliberation is not feasible in a large-scale mass society. Let me briefly outline why smaller legislative assemblies can offer a reasonable alternative. Participation in deliberation can, as Mill emphasised, help educate otherwise poorly-informed persons. It can enhance the quality of their beliefs, helping them distinguish correct from incorrect information. However, truth, as Onora O'Neill suggests, does not emerge simply from a collision of competing claims.³⁵ Rather, it requires epistemic norms and processes, built into the discursive exercise, that facilitate truth-tracking. Smaller deliberative bodies offer an opportunity to establish such norms that would be harder to replicate at a mass-scale. They allow us to target well-known pathologies that hinder the epistemic quality of deliberation, such as framing effects or polarisation. Experiments on randomly selected bodies known as 'mini-publics' suggest a range of procedural devices best geared at mitigating particular discursive pathologies. Consider, for instance, attempts to counter the influence of 'dominant frames', which threaten the discursive process by producing 'a pre-deliberative consensus, usually defining a problem as being solely of one type, or admitting only one possible solution'.³⁶ Such frames can pose epistemic costs by blocking the processing of information that fails to fit the dominant interpretation of a problem. Even when participants are exposed to information that is, in fact, relevant to resolving a problem, their reliance on familiar frames may lead them to neglect it, or fail to give it adequate weight. Research on deliberative mini-publics shows, though, that there are design features that can help mitigate the impact of dominant frames. Focusing on specific practical problems rather than abstract questions of values, for example, allows participants to disaggregate issues and focus their inquiry in ways that allow consideration over relevant kinds of information.³⁷ Similarly, briefings provided to participants can introduce them to alternatives unavailable in present discourse, prompting them to think creatively about a given problem.³⁸ Although much work remains to be done on this front, the empirical evidence available gives us grounds to think that deliberative pathologies like framing effects can be mitigated through careful institutional design. I suspect these design

³⁵ Onora O'Neill, *Regulating for Communication* (Oxford: The Foundation for Law, Justice and Society, 2012), 3.

³⁶ Aubin Calvert and Mark E. Warren, "Deliberative Democracy and Framing Effects: Why Frames are a Problem and How Deliberative Minipublics Might Overcome Them," in *Deliberative Minipublics*, ed. Kimmo Grönlund, André Bächtiger, Maija Setälä (Colchester: ECPR Press, 2014), 208.

³⁷ *Ibid.*, 214–15.

³⁸ *Ibid.*

features are considerably harder to replicate with similar levels of success at the level of mass discussion among voters.

At this point, one might object that the epistemic success of deliberative mini-publics ought to be attributed not to their smaller *size* but their *composition*. Such bodies are composed of randomly selected lay-citizens rather than partisan political elites accountable to epistemically unsound mass publics. In other words, responsiveness to an epistemically unsound mass public would militate against any attempt at addressing obstacles to deliberation. Perhaps arguments like these emphasise the need for using sortition in composing legislative bodies. Presently, though, it is worth noting that this argument overstates the case from the perspective of a proponent of epistemic LOQs. After all, concerns about the epistemic effects of public responsiveness would apply equally to attempts to enhance the quality of the legislative assembly by selecting putatively competent elected representatives.

To conclude, smaller legislative assemblies offer an opportunity to mitigate concerns about ignorance attached to discussion among citizens on a larger scale. Which learning and deliberative strategies can best utilise this opportunity remains a question of on-going debate among democratic theorists. My aim here been to underscore that we can, once we look beyond LOQs, turn to these questions rather than probe whom we ought to exclude from our legislatures. But why look beyond LOQs at all?

4. The Normative Case against LOQs: A Perversity Argument

Let us assume, however, despite my discussion in the above section, that there nevertheless remain some grounds for restricting legislative office to those deemed competent along some relevant parameter. Are such restrictions desirable from a normative perspective? In the previous chapter, I explored epistemic arguments against restricted suffrage. Such arguments began by suggesting that there are good grounds for the necessary inclusion of disadvantaged groups in deliberations over their interests. Due to epistemic avoidance, members of advantaged groups face distinctive challenges in accessing the interests of disadvantaged groups. I then argued that the disparate impact of such competence-based restrictions on the vote would result in the exclusion of disadvantaged groups from the political process, hindering adequate consideration of their interests. I explored two reasons why reduced voting power might affect discursive capacity. The first focused on the reduced strategic incentive for others to engage with those excluded or disadvantaged by epistocracy (the strategic incentive effect). The second emphasised, following proponents of suffrage reform in Britain, the devaluation of respect afforded to those deemed incompetent or less competent by epistocratic criterion for awarding the vote (the

devaluation effect). Does the epistemic case against restricted suffrage also apply to qualifications or competence tests that one might prescribe for holding legislative office? Here, one might insist that LOQs avoid the objections sketched in the previous chapter, because they neither devalue voters as incompetent, nor undermine strategic incentives for legislators to engage with them. In other words, *as long as votes are distributed across the population in an unqualified way*, LOQs suffer from neither the strategic incentive effect nor the devaluation effect. Universal suffrage ensures a baseline level of political power for all voters, allowing us to incorporate LOQs to enhance the epistemic quality of decisions without incurring the epistemic costs associated with epistocratic disenfranchisement.

In what follows, I argue that the above position is too hasty. Even in circumstances where votes are equally distributed across the population, the disparate impact of epistemic LOQs on disadvantaged social groups vitiates deliberation in much the same way as competence-based voter restrictions. I argue, first, that the strategic incentive for legislators to represent voters from socially disadvantaged groups is insufficient for adequate consideration of the latter's interests; and second, that competence-based LOQs threaten to devalue already disadvantaged groups. Consequently, LOQs, like competence-based restrictions on the vote face what I have called the 'perversity' objection. That is, these are *epistemically self-defeating* in the same way as epistocratic disenfranchisement.

4.1 THE STRATEGIC INCENTIVE EFFECT

Let me first consider the suggestion that the *exclusion* of certain demographic groups from legislative office would threaten the epistemic quality of decisions by affecting deliberative engagement with their interests. Following epistemic arguments against epistocratic disenfranchisement, one might suggest that, like the exclusion of certain demographic groups from the franchise, the absence of some groups from legislative office, would be self-defeating. It would result in inadequate consideration of the excluded groups' interests, driving down the epistemic quality of political outcomes. Applied to legislative office, this argument entails the notion that descriptive representation is necessary for the substantive representation of those groups' interests. That is, the legislative assembly must be composed of members of the groups in order for such groups' interests to receive adequate consideration.

But this conclusion might seem misguided because it assumes an implausible connection between the legislative presence of some group and the epistemic quality of political outcomes. This because the exclusion from legislative office is compatible with groups' ability to force consideration of their claims qua voters. As such, the exclusion of some demographic group from the legislature is irrelevant insofar as those elected have strategic incentives to engage with that groups' claims about its

interests. Electoral systems may fare better or worse in ensuring that various demographic groups in society are able to influence the electoral process and advance their voice. Plurality electoral systems are seen as worse than mechanisms that encourage representatives to reach out to minority groups. In first-past-the-post systems, for instance, candidates need only appeal to concerns of the majority in a given constituency to win an election. Then, too, a group which constitutes a numerical minority might have some political influence under certain circumstances. Dalit (formerly ‘Untouchable’) voters might constitute a small share of the overall constituency in some Indian state but might succeed in having their concerns heard since their vote might be sizable enough to affect the outcome of an election. A candidate concerned that the difference between herself and her closest rival might be offset by a decent share of the Dalit vote have strong incentive to engage with the minority’s claims. From a normative perspective, electoral systems ought to be designed in a manner that make it likely that candidates would engage with minority groups rather than leaving this up to chance.³⁹ LOQs, however, do not themselves necessarily undermine the incentive available to decision-makers to engage with demoted demographic groups.

Indeed, the above objection is correct to note that the strategic incentive effect has *less* force with respect to legislative office when compared to voters. However, there are good grounds to insist that descriptive representation of disadvantaged groups is significant, and that reliance on the political power of voters from those groups is insufficient. Firstly, as Anne Phillips argues, the insistence on descriptive representation stems from a strong dose of realism: ‘Representatives do have considerable autonomy, which is why it matters who those representatives are’.⁴⁰ Policy decisions made by political representatives do not always reflect agreements made in advance through programmatic commitments. Rather, ‘new issues emerge alongside unanticipated constraints, and in the subsequent weighing of interpretations and priorities, it matters immensely who the representatives are’.⁴¹ Although Phillips suggests that legislators tend to hold autonomy with respect to decision-making, the same also holds true, to some extent, about their engagement with voters. Decisional autonomy can travel together with discursive independence: legislators can choose to take decisions in an independent manner and not engage with claims made by their constituents. If anything, as I suggested earlier, the epistocratic approach to political representation relies on this autonomy, insisting on wedging a gap between voters and their representatives in attempt to boost the competence of the latter. It would be inconsistent with this approach to suggest that descriptive representation does not

³⁹ Michael Rabinder James, for instance, argues in favour of multi-member constituencies with preferential voting. This would enable racial and ethnic minorities to play a role in electing candidates, amplifying their voice in the democratic process. See Michael Rabinder James, “Diversity, Deliberation, and the Concepts of Constituency,” *Polity* Vol. 40, No. 2 (2008): 229–37.

⁴⁰ Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1995), 78.

⁴¹ *Ibid.*, 44.

matter because legislators are ultimately accountable to their voters. If representatives are indeed so closely tied to their voters' preferences, then we must admit that epistemic LOQs are futile. Alternatively, admitting that they stand above voters with respect to their greater competence means affording representatives a degree of autonomy. To admit such autonomy, however, is to weaken the case that representatives would be led, through strategic imperative, to adequately consider the interests of voters from disadvantaged groups.

A narrower version of this argument suggests that legislators have considerable autonomy with respect to what Jane Mansbridge calls 'uncrystallised interests'.⁴² By this she means, interests 'where political parties have not formulated stances on an issue that might affect a group's interests, the issue has not been debated in the media, and neither citizens nor their representatives have well-articulated positions for and against particular policies on the issue'.⁴³ Even if voters do, in fact, have an influential say on most political issues, for at least a subset of important decisions, legislators are required to offer their judgment without significant input from their voters. Such issues require fresh thinking to decide on appropriate policies since the agenda has hitherto been constructed without reference to specific areas of concern. *Who* the representative is acquires particular salience in such contexts. As Mansbridge argues, in the case of uncrystallised interests, the communication that matters most is not vertical—between representative and constituent—but horizontal, among deliberating legislators. In the latter, 'a descriptive representative can draw on elements of experiences shared with constituents to explore the uncharted ramifications of newly presented issues and also to speak on those issues with a voice carrying the authority of experience'.⁴⁴ In such instances, the disproportionate impact of LOQs on socially disadvantaged groups is particularly worrying from an epistemic perspective. Because voters rely on their own experiences, and on deliberations with other legislators, we cannot rely on their strategic incentive to engage with voters; uncrystallised issues, by their very definition, do not offer such incentive. By excluding members from disadvantaged groups, LOQs disable their experiences from playing a role in legislative deliberation over such interests. Given the salience of experience in decisions over such interests, this absence poses a significant epistemic gap.

A second argument against excessive reliance on accountability to voters stems from the recognition of 'communicative mistrust'⁴⁵, which can characterise the relationship between advantaged and disadvantaged social groups. Under conditions of such mistrust, subordinate groups are used to not being taken seriously. Further, communicative practices, involving things like subtle cues or mutual understanding,

⁴² Jane Mansbridge, 'Should Workers Represent Workers?', *Swiss Political Science Review* Vol. 21, No. 2 (2015): 262.

⁴³ *Ibid.*

⁴⁴ Jane Mansbridge, 'Should Blacks Represent Blacks and Women Represent Women? A Contingent "Yes"', *The Journal of Politics* 61, no. 3 (1999): 644.

⁴⁵ *Ibid.*, 641

that function smoothly between members of advantaged group are unavailable across privileged and subordinate groups. This results in situations where, for example, Dalit voters are more likely to reach out to co-ethnic legislators rather than their Brahmin counterparts.⁴⁶ At the same time, Brahmin legislators are more likely to respond to their co-ethnic voters, even when they are from a district different than their own.⁴⁷

Here, one might rightly pause to consider whether the exclusion of some members of one's group from the legislature is likely to exacerbate communicative mistrust. After all, epistemic LOQs are unlikely to eliminate all members of a given community from parliament. Under the operation of an educational qualification, for instance, educated members of one's community can continue to hold office. Indeed, they might not have the best first-hand insight into the disadvantage faced by their uneducated co-ethnic citizens. However, they are less susceptible to communicative mistrust insofar as their shared membership of a disadvantaged social group fosters greater interaction with voters. Interestingly, the argument from communicative distrust may have less force against LOQs particularly in contexts characterised by sharp divisions between social groups. Sharp polarisation between groups may encourage voters from subordinate groups to view their own members favourably. They may do so even when they are separated from their representatives along dimensions of class or other social privilege that result in unequal access to education within the group. In sum, the conditions under which communicative mistrust is most absent, is deliberately undesirable from another perspective: favourable horizontal interaction between social groups.

Further, divisions of class or other forms of social privilege within the disadvantaged social group can also fade into the background when these are uncrystallised. The social conditions that enable some members of a disadvantaged group to access education while making it less likely that others in the same group could do the same may not yet have filtered into the political agenda. Indeed, polarisation, as mentioned above, is one such reason. However, the absence of crystallisation may have taken place for a wider range of historical and contextual reasons. In such cases, following Mansbridge, the need for descriptive representatives, who have experiential knowledge, is the strongest. In other words, even though communicative mistrust between elite and marginalised members of a

⁴⁶ Several studies show, for instance, evidence of greater communication between representatives and constituents in the United States when the two belong to the same racial group. See Claudine Gay, "Spirals of Trust? The Effect of Descriptive Representation on the Relationship Between Citizens and Their Government," *American Journal of Political Science* 46, no. 4 (2002): 717–733; David E. Broockman, "Distorted Communication, Unequal Representation: Constituents Communicate Less to Representatives Not of Their Race," *American Journal of Political Science* 58, no. 2 (2014): 307–21. Further research on the communicative dynamics between representatives and constituents is necessary to test the theoretical point advanced here, and assess whether findings from the United States are also applicable to ethnic relations in India.

⁴⁷ Again, the evidence for this hypothesis comes largely from studies conducted elsewhere. See Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (Cambridge: Harvard University Press, 1993), 218.

disadvantaged group might be absent, when this absence can be attributed to uncrystallised interests, the case for the legislative presence of marginalised members of that group is strongest. Yet, when such interests do, in fact, crystallise, they can foster greater communicative mistrust *within* a disadvantaged group. In such cases, marginalised members of that group can justifiably prefer other marginalised in-group members, more closely aligned with their interests, as their representatives.

4.2 DEVALUATION EFFECT

Let me now turn to LOQs and whether, they, too are subject to what have called the devaluation effect. As I argued in the previous chapter, binaries such as ‘competent’ and ‘incompetent’ fail to track the wider range of competencies people possess, and cannot capture ways in which they could productively contribute to political deliberation. Once people are categorised as either competent or incompetent, this is also likely to affect how they interact with each other in the discursive process. In particular, I emphasised that being widely seen as incompetent is likely to result in devaluation of a disadvantaged groups’ claims by members of advantaged groups. Further, it can threaten self-devaluation, as when members of a disadvantaged group do not find their point worth pressing even when it in fact merits further attention. As I argued in the previous chapter, such devaluation is troublesome from a normative perspective because it can vitiate deliberation with disadvantaged groups about their interests. Might the same be said of competence-based LOQs? Here, it is worth recalling Ambedkar’s concern that the absence of disadvantaged groups from the legislative sphere has important negative effects outside the narrow domain of parliamentary politics. It is likely to reinforce poor social relations and communicative practices in wider society. With this in mind, let me turn to three possible ways in which LOQs intended to exclude allegedly incompetent legislators may trigger devaluation: *vertically*, between citizens and elected representatives, *horizontally*, between citizens of different groups, and *internally*, among citizens of the demoted group.

One might argue that epistemic LOQs stipulate a vertical asymmetry between citizens and representatives. The latter are known to stand above ordinary voters, many of whom fail to satisfy LOQs. This harbours the possibility that representatives may disrespect citizens on the grounds of their relative epistemic inferiority. In particular, LOQs may result in disrespect by representatives towards demographic groups, who are widely seen as not having the epistemic capacity to hold office. So, for instance, the exclusion of Dalit representatives from the legislature would fuel devaluation of their claims by Brahmin representatives. It could lead a Brahmin legislator to insist that Dalit voters are epistemically inferior to him, and, therefore cannot judge how he ought to act.

But it is easy to exaggerate the role of LOQs in producing the devaluation effect vertically. To some extent, any form of representation engenders a degree of

disrespect by office bearers towards ordinary voters. This is because representation ordinarily involves epistemic asymmetry between voters and their representatives. Representatives are expected to be more informed, and able to take significant political decisions, than mere voters. This notion need not depend on an epistocratic premise, whereby persons with *a priori* epistemic capacity alone ought to serve as representation. Instead, it can also rely on non-hierarchical premises, whereby representation involves a division of labour. That is, the representative might suggest that now that she has been chosen to adopt decisions, she has come to acquire greater expertise, which places her above her voters with respect to epistemic status. Whereas any of them could take her place, she, and not them, have undertaken the role of a representative, and the corresponding epistemic effort it entails. LOQs, then, are not a unique source of the devaluation of voters' judgments by representatives; rather, the very institution of representative government seems to harbour potential for such an effect. Crucially, the strategic incentive afforded by a well-functioning electoral system serves to countervail the epistemically damaging features of the citizen-representative asymmetry. Consider, for instance, the alleged cost incurred by Hilary Clinton for calling supporters of Donald Trump a 'basket of deplorables'.⁴⁸ Or the backlash faced by politicians who seemed to suggest that those who favoured Brexit were ignorant. These examples highlight, then, an important feature of representation. On the one hand, it attempts to place representatives in an epistemically better position to take decisions. On the other hand, it makes it difficult for representatives to appeal to their own higher epistemic status to obtain support from their voters.

LOQs can result in the epistemic devaluation effect *horizontally*, between voters. Some group of voters would be viewed widely as ineligible for office on the grounds of their incompetence by others. This can result in the devaluation of the former group's claims by qualified voters. Brahmin voters (privileged group), who satisfy qualifications for legislative office, may look down unfavourably upon Dalit voters (demoted group) widely known as ineligible on the grounds of incompetence. Empirical research demonstrates how greater descriptive representation of stigmatised groups affects the psychology of members of dominant groups.⁴⁹ With the rise of descriptive representation, dominant groups perceive that social norms relating to interactions with disadvantaged groups are changing around them, and consequently adjust their own behaviours. Conversely, the absence of leaders from disadvantaged groups—especially on explicit grounds of incompetence—could

⁴⁸ Chris Weignant, "The Deplorable Basket Case," *Huffington Post*, 9 December 2016, https://www.huffingtonpost.com/chris-weignat/the-deplorable-basket-cas_b_11984474.html?guccounter=1

⁴⁹ Simon Chauchard, "Can Descriptive Representation Change Beliefs about a Stigmatized Group? Evidence from Rural India," *American Political Science Review* 108, no. 2 (2014): 417–20; Lori Beaman, Raghavendra Chattopadhyay, Esther Duflo, Rohini Pande, and Petia Topalova. "Powerful Women: Does Exposure Reduce Bias?," *Quarterly Journal of Economics* 124, no. 4 (2009): 1497–1540.

perpetuate perceived norms of prejudice against those communities. This, as I argued, is epistemically damaging insofar as it prevents less-than-warranted engagement with claims made by Dalit voters. Here, the epistocrat might insist that Brahmin voters cannot altogether disregard claims made by Dalit voters. Insofar as they hold a vote, they have the ability to influence electoral outcomes, making it likely that their claims would receive engagement by other voters. In other words, even if LOQs result in devaluation of the demoted group's judgments, the privileged group cannot necessarily act upon this judgment. Instead, they may be forced to engage with members of the demoted group *as if* their claims deserved un-devalued respect. One might worry that this makes respect for voters' judgments contingent upon their ability to serve as game-changers (or potential game-changers). Insofar as a group disqualified from office lacks the numbers to play a pivotal role in the election, voters from the privileged group may continue to devalue, and act upon their devaluation of, claims made by members of the demoted group.

Finally, an important way in which competence-based exclusion can generate devaluation is internally, through the demoted group's *self-perception*. Voters belonging to a group widely perceived as unfit for office may in turn treat the political process as a domain unsuitable for themselves. Even in the presence of an informal norm, rather than an actual rule, which suggests that politics is a 'man's game', women voters tend to disengage from democratic elections. Conversely, when there are more women representatives, the perceived strength of this norm begins to weaken, producing greater engagement from women voters.⁵⁰ We might expect, then, that an actual rule that solidified demoted groups' perception of themselves as incompetent for politics, would result in their withdrawal from political life. This is epistemically undesirable insofar as it may prevent such groups from contributing in ways commensurate with their political capabilities, while also hindering them from further developing those capacities.

To sum up, there is an important insight we can derive from Ambedkar's commentary on the representation of disadvantaged groups within the legislature, examined in Chapter 3. His *social endosmosis* argument insisted that the representation of interests was not the only relevant consideration along which the need for descriptive representatives ought to be assessed. Rather, another salient consideration was the impact that the demographic composition of the legislature would have on relations between different groups in a society. How a legislature looks has important social ramifications for political deliberation and communicative ties outside the assembly. For Ambedkar, the legislative absence of socially disadvantaged

⁵⁰ Jeffrey A. Karp and Susan A. Banducci, "When Politics Is Not Just a Man's Game: Women's Representation and Political Engagement," *Electoral Studies* Vol. 27, No. 1 (2008): 105-15; Christina Wolbrecht and David E. Campbell, 'Leading by Example: Female Members of Parliament as Political Role Models', *American Journal of Political Science*, Vol. 51, No. 4 (2007): 921-39; David Campbell and Christina Wolbrecht, "See Jane Run: Women Politicians as Role Models for Adolescents," *Journal of Politics* Vol. 68, No.2 (2006): 233-47

groups due to self-internalised inferiority and prejudice by others, meant that their absence from the legislature would reinforce negative communicative practices. His point has even greater force if a legal norm, in the form of LOQs, were to characterise disadvantaged groups as ‘incompetent’. It would serve to reinforce the kind of internalised self-denigration and inflicted prejudice that such groups already face. Recall that Ambedkar, apart from urging the social endosmosis argument, also insisted that his call for the legislative presence of Dalit legislators was underpinned by the worry that Brahmin lawmakers would not have adequate understanding of Dalit interests. I have tried to suggest that Ambedkar’s two arguments can be seen as related. The concern that the absence of groups induced by LOQs would hinder understanding of their interests and that it would also foster a harmful discursive environment are not just two separate set of arguments. Rather, the two are connected in a significant way. As we noted in our discussion on franchise restrictions, adequate understanding of the interests of disadvantaged groups is likely threatened *because of* the discursive asymmetry that is reinforced by categorising them as incompetent.

4.3 THE QUESTION OF LEGISLATIVE QUOTAS

My analysis in this section seems to suggest that the descriptive representation of disadvantaged groups in the legislature is valuable from an epistemic perspective.⁵¹ There seems no reason, then, to stop at the negative prescription that members of such groups should not be excluded by the establishment of a competence-based qualification. Instead, it appears that the above analysis points in favour of establishing descriptive representation through positive means. After all, even when epistemic qualifications do not exist, many disadvantaged social groups nevertheless lack descriptive representatives in legislative assemblies. This leads us to the dilemma Ambedkar faced in his writings on the subject. For Ambedkar, one could not consistently (1) support legislative quotas for socially disadvantaged groups on epistemic grounds and (2) reject other epistemic qualifications in the form of competence-based LOQs. After all, legislative quotas prevent advantaged social groups from running for certain constituencies, on the grounds that such restrictions would be epistemically advantageous. Why are these restrictions permissible while other competence-based ones, like educational qualifications, unjustified?

First, it is worth asking whether epistemically grounded legislative quotas undermine strategic incentives for deliberation with unreserved groups? This is unlikely because quotas aimed at securing the descriptive representation of groups constitute exceptions to unreserved constituencies. The proportion of seats that must be reserved under a scheme of quotas will vary by context. The exact numerical strength of such quotas would depend on how many representatives it is necessary to adequately trigger deliberation with a disadvantaged social group, and represent the

⁵¹ In other words, reserved places for disadvantaged groups are best defended, not as ‘correspondence’ qualifications, but as epistemic ones.

heterogeneous interests within that group. At any rate, such seats are unlikely to crowd out the entire legislative space and weaken incentives for legislators to engage with unreserved groups. But this response leads us to a further question. It would seem, then, that epistemic qualification for some legislative places, aimed at reaching an appropriate ‘deliberative threshold’ for competent political actors is justified. In that respect, the Indian Constitution, for instance, can be criticised for not having gone far enough. As I demonstrated in Chapter 3, the Constitution sets aside twelve places in the legislature for ‘special experts’ from narrowly limited domains. One might now argue that, by limiting such spaces to just twelve members, the Constitution does not give experts enough weight to mobilise deliberation vis-à-vis others.

At this point, we should ask if legislative quotas for disadvantaged social groups would trigger the devaluation effect. That is, would they result in lowered standing for unreserved groups qua epistemic agents, leading to horizontal and internal devaluation of their claims within the deliberative process? I have previously suggested that exclusion on the grounds of incompetence is likely to entrench or worsen existing negative attitudes towards disadvantaged groups. This argument emphasised how members of disadvantaged groups are already seen as epistemically suspect actors by others, who tend to treat their claims as not worth engaging. Further, many members of such groups devalue their own epistemic capacities, treating their claims as not worth pressing. It was in this context that competence-based restrictions could reinforce the kind of devaluation that precludes engagement with their claims. It is unlikely that advantaged, unreserved social groups are subject to such attitudes, that risk worsening through legislative quotas for disadvantaged groups.

This argument also underscores why setting aside seats for putatively competent actors is normatively undesirable. If such seats constitute, like in the Indian Parliament, merely a minuscule proportion of the legislature, then they might arguably have little influence on social attitudes, avoiding the devaluation of disadvantaged social groups. However, the avoidance of devaluation comes at the price of influence. If legislators who occupy these restricted seats are to exercise influence over decision-making, and perform the epistemic task for which such seats were established, then, as I suggested previously, they must constitute a non-trivial share of the legislative space. They must reach an adequate threshold whereby they can get others to engage with their claims. However, once they are afforded such significance, they risk marking out certain kinds of actors as epistemically privileged, while devaluing others.

In sum, *contra* Ambedkar, it is possible to distinguish legislative quotas for marginalised groups on epistemic grounds without having to also endorse competence-based qualifications. Whereas both constitute what I have called epistemic qualifications, the former does not run into the argument from devaluation, whereas the latter risks doing so.

5. Conclusion

This chapter has tried to demonstrate how an epistocrat might defend the case for legislative office qualifications aimed at excluding ‘incompetent’ persons. Given the latitude legislators often enjoy in relation to their constituents, the epistocrat might insist that they ought to hold greater competence than ordinary voters. Since they must frequently exercise independent judgment on political issues, there are good grounds for insisting that legislators should demonstrate a certain level of competence, as indicated by some kind of proxy test. However, admitting that legislators enjoy such autonomy disables the epistocrat from also arguing that legislators would be led by strategic considerations to act in ways preferred by their constituents. The epistocrat cannot consistently defend LOQs and point to the democratic control it retains through the operation of adult suffrage. Further, I argued that there are good grounds, once we admit that legislators enjoy autonomy, to resist constitutional mechanisms that would disproportionately exclude members of disadvantaged groups. Finally, this chapter argued that, like epistocratic disenfranchisement, competence-based LOQs would likely result in the devaluation of already disadvantaged social groups. Such devaluation risks threatening their standing in political deliberation, and, therefore, adequate consideration of their interests. As a result, competence-based restrictions on legislative office are likely to be self-defeating from an epistemic perspective.

7

Indirect Elections: Filters or Futile?

This chapter turns towards the final mechanism for excluding incompetent persons explored in this thesis: indirect elections. I have previously emphasised the epistocratic underpinnings of this mechanism, and their appeal during the framing of constitutions in the United States and India. In this chapter, I explore whether indirect elections, in fact, perform the epistemic task that framers of these constitutions attributed to them. The main argument of this chapter is that indirect elections are futile insofar as they are expected to produce better decision-makers who act independently from the preferences of ordinary voters. The first section begins by examining the variety of indirect elections found in contemporary democratic institutions. The second section attempts to build an epistocratic case for indirect elections. I argue that this case leans on the assumption that (i) compared to their substantive preferences about policies, persons' choice of secondary electors is epistemically reliable, and that (ii) indirectly elected legislators can be untethered from the substantive preferences of ordinary voters. The third section argues that neither assumption is plausible, rendering indirect elections a futile exercise.

1. Indirect Elections: A Conceptual Map

I begin by offering a conceptual map of indirect elections. Such elections involve three primary components: (1) *primary electors*, who elect the intermediaries, who, in turn, elect some indirectly elected official; (2) *secondary electors*, who serve as the link between primary electors and indirectly elected officials; and (3) *indirectly elected officials*, who are elected by secondary electors.

1.1 TYPES OF INDIRECT ELECTIONS

Processes of indirect elections can be distinguished along two dimensions: first, the extent to which they are indeed *indirect*; and secondly, whether indirect election forms merely a component of the process of choosing an official, or whether it is exhaustive of that process. I begin by exploring the latter dimension.

1.1.1 *Simpliciter and Qualified Indirect Elections*

Let me begin by distinguishing between indirect elections *simpliciter* and *qualified* indirect elections. In the former, a group of primary electors elects secondary voters, who, in turn, elect an official indirectly. Before the Seventeenth Amendment to the United States Constitution, senators were elected indirectly by the directly elected legislatures of different states. Indirectly elected offices can also have other indirectly elected bodies as their secondary voters. For instance, the Rajya Sabha, India's upper legislative chamber, is indirectly elected by the legislatures of different states. Members of the Rajya Sabha then act as secondary voters in electing the deputy-chairperson of the house.

In qualified indirect elections, secondary voters are limited to ratifying or rejecting a candidate nominated by a separate body or person. Secondary voters do not have a say in who can or cannot contest the election. Nor are they provided with a set of candidates amongst whom they must elect the office-bearer. Their role, rather, is limited to either confirming or rejecting the nominee. In the United States, Judges of the Supreme Court are nominated by the President and ratified by the Senate. The nominating body, as well as the secondary voters, in qualified indirect elections might themselves be indirectly elected. Before the Seventeenth Amendment, judges in the United States were indirectly by an indirectly elected Senate after nomination by an indirectly elected President.

1.1.2 *Nominal and Substantive Indirect Elections*

It is also worth distinguishing between substantive indirect elections and nominal indirect elections. Indirect elections are nominal when the preferences of the primary elector determine, or are taken as determinative of, the indirect office. The American President is indirectly elected by the electoral college in a mere nominal sense. Members of the college *will* vote for a presidential candidate on the basis of the preference expressed by their respective primary voters. More controversially, the British Prime Minister can be said to be only nominally indirectly elected for the most part by Parliament. Campaigns are undertaken with the promise of electing a specific leader as Prime Minister. Indeed, if a coalition is necessary or if the government falls, Parliament may have to elect a new government. In these circumstances, Parliament's task changes from a nominal to substantive one. These exceptions, however, prove the rule, whereby legislators elected on a given party ticket, with some individual as its leader, take their election to entail a determinative preference for that figure as Prime Minister. At the same time, there are also some indirect elections which are not nominal: the secondary elector does indeed exercise independent judgment, rather than being bound, through formal rules or convention, by the wishes of the primary elector.

1.2 TYPES OF SECONDARY ELECTORS

Secondary electors can be chosen *exclusively* for the indirect election of some official or officials. The clearest example of this is that of the electoral college in the United States. There, the electoral college has no other function but the election of the President. However, some secondary electors are elected by primary electors for performing other tasks, only one of which is the selection of indirectly elected officials. We can refer to them as *non-exclusive* secondary electors. Before the Seventeenth Amendment, state legislatures in the United States were supposed to elect senators. The election of senators, though, was not their primary purpose. Consider, for instance, a scenario where elections to the Senate were withheld for some reason. The secondary electors in this case would not have ceased to exist in its capacity as legislating assemblies for their states. Similarly, the Senate in the United States confirms, and ultimately elects, a Supreme Court judge nominated by the President. While an important part of a senator's job, such election is not her only purpose. There might be Senates that are never called upon to elect a judge because no such vacancy exists on the bench. In this scenario, the Senate does not become a redundant body, but can continue to serve a variety of constitutional functions.

I have previously suggested that elections might be indirect in a nominal or substantive sense. There might be substantive indirect elections for an office, where the election is a non-exclusive purpose of a secondary elector. As mentioned earlier, Members of the Rajya Sabha in India are elected by state legislators. Such elections are substantively—and not just nominally—indirect elections. Further, the election of Rajya Sabha members is a non-exclusive function of the state legislative assemblies. The elections of the Bahá'í National Spiritual Assembly, on the other hand, offer an example of substantive indirect elections involving exclusive secondary electors. Members of the Bahá'í faith elect delegates through a system of proportional representation, and those delegates in turn elect the National Spiritual Assembly. The delegates are elected exclusively for the purpose of choosing members of the National Spiritual Assembly, and serve no other purpose. There may also be nominal indirect elections for an office, where such election is the exclusive purpose of the secondary elector: for instance, the election of the American President by an electoral college, which exists only to (nominally) elect the President. Furthermore, there are also nominally indirect elections involving non-exclusive secondary electors. For example, the British Prime Minister (under ordinary circumstances) can be said to be nominally indirectly elected by Westminster, but such election is a non-exclusive purpose that Members of Parliament serve.

Fig. 1 Types of Indirect Elections and Secondary Electors

TYPE OF INDIRECT ELECTION	TYPE OF SECONDARY ELECTORS		
	<i>Exclusive Electors</i>	<i>Secondary</i>	<i>Non-Exclusive Secondary Electors</i>
<i>Nominally Indirect Elections</i>	Electoral election of the US President	College's of the US	Westminster's election of the British Prime Minister
<i>Substantively Indirect Elections</i>	Baha'i Deputies elect members of the National Spiritual Assembly		State legislatures' election of senators before the Seventeenth Amendment

1. 3 TYPES OF INDIRECTLY ELECTED OFFICIALS

Indirect offices can vary according to the relationship between their *functions* relative to the functions of the secondary electors. Some indirectly elected officials and their secondary electors might have a *congruent* relationship whereby the indirect office is supposed to act as an extension of, or arm of, the secondary elector. Here, a decision-making body cedes a portion of its own authority to a different set of actors, in turn, elected by it. To exemplify, the British Prime Minister can delegate some of the powers within the executive domain to ministers she appoints to the Cabinet. The European Parliament can similarly delegate part of its legislative powers to the European Commission, which it appoints through a qualified indirect election, together with the European Council.

Alternatively, the indirectly elected official might have a *divergent* function in relation to the secondary elector. That is, it could be charged with the performance of functions which are not within the purview of the secondary electors. The Judiciary in the American constitutional system, indirectly elected by the American Senate and the President, performs a different set of functions than those performed by the legislature and the executive. Judges are supposed to scrutinise and check decisions made by both the other branches. Both, the legislature and the executive, are unauthorised to take decisions that judges, in the performance of their constitutional function, deem impermissible.

Note that the congruence or divergence of functions often travel together with another feature: the dependence or independence of survival. One would ordinarily expect divergence of function to accompany independence of survival. The American Supreme Court's judges are indirectly elected by the President and the Senate, and they perform a divergent function. But neither the Senate and the President on the one hand, nor the judiciary on the other, depends on each other for their survival. Further, congruence of function might be expected to travel together with unidirectional dependence of the indirectly elected official on the secondary elector for survival. Members of the Cabinet in the United Kingdom are indirectly elected by the Prime Minister. She appoints such ministers to take decisions which

lie within her constitutional purview. At the same time, the Prime Minister is also free to dismiss any member of her Cabinet. Her ministers, then, perform functions that are congruent with those of the Prime Minister while depending on the latter for their survival.

However, there are several possible configurations concerning the relationship between secondary electors and the indirectly elected officials they elect. The Prime Minister in India might be indirectly elected by the legislature, and might perform functions independent from it. The legislature's function can here be antagonistic to—rather than congruent with—that of the executive. But the survival of the indirectly elected officials (government) depends on support from the secondary elector (Lok Sabha). The Indian government can be dissolved at the discretion of the Lok Sabha. The Lok Sabha, in turn, can be dissolved by the government it elects. Here, the secondary electors and indirectly elected officials are in a relationship where they perform independent functions, but are co-dependent for survival. In Britain, by contrast, the indirectly elected government can be dissolved by the House of Commons, but cannot dissolve the House of Commons, following the Fixed-term Parliaments Act. The indirectly elected officials and secondary electors, then, perform independent functions, but only the indirectly elected officials depend on the secondary electors for their survival.

Fig. 2 Relationships between Secondary Electors and Indirectly Elected Officials

FUNCTIONS OF INDIRECTLY ELECTED OFFICIALS AND SECONDARY ELECTORS	SURVIVAL OF INDIRECTLY ELECTED OFFICIALS AND SECONDARY ELECTORS			
	<i>Co-Dependent</i>	<i>Secondary Electors Dependent on Indirectly Elected Officials</i>	<i>Indirectly Elected Officials Dependent on Secondary Electors</i>	<i>Both independent</i>
<i>Congruent Functions</i>			Cabinet Officials and the Prime Minister in the United Kingdom	
<i>Divergent Functions</i>	Indian Prime Minister and the Lok Sabha		British Prime Minister and Westminster	Federal Judges in the United States

2. The Epistemic Case for Indirect Election

I have previously demonstrated that the framers of the American Constitution viewed indirect elections as a mechanism for the ‘successive filtrations’ of the popular will. On this account, the intermediate election was viewed as a sieve through which ordinary citizens’ preferences would pass, filtering away the false and irrational, and allowing only the epistemically superior to proceed to the final stage. While the American framers hypothesised about the effects of successive refinement, Alexis de Tocqueville claimed to have observed these first-hand. Consider his comparison of the House of Representatives with the American Senate. For Tocqueville, the House was characterised by ‘vulgar’ demeanour, and composed of ‘almost all obscure individuals, whose names bring no associations to mind’, some of whom ‘do not always know how to write correctly’.¹ By contrast, the Senate contained ‘within a small space a large proportion of the celebrated men of America’. Unlike the lower classes, who constituted the House, the Senate was made up of persons who had had active and illustrious careers. ‘The Senate is composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose arguments would do honour to the most remarkable parliamentary debates of Europe’, Tocqueville argued.² What, then, explained this stark difference? Tocqueville argued that the difference lay in the manner of election. The indirect election to the Senate meant that its representatives were better than those in the House:

this transmission of the popular authority through an assembly of chosen men operates an important change in it by refining its discretion and improving its choice. Men who are chosen in this manner accurately represent the majority of the nation which governs them; but they represent only the elevated thoughts that are current in the community and the generous propensities that prompt its nobler actions rather than the petty passions that disturb or the vices that disgrace it.³

Why, though, would indirect election produce superior decision-makers relative to direct elections? What mechanism can explain the epistemic enhancement that purportedly takes place in a two-step election? Advocates of indirect elections tend to gloss over this, asserting rather than explaining the epistemically productive dimension they draw upon. The notion of filtration seems a more attractive metaphor with its underlying mechanism excessively unclear.

One might—as I argued the case to be in the American constitutional model—embed varied qualifications for different stages of an indirect elections. For instance, in France, the qualifications for primary voters were lower compared to the more stringent ones applied to secondary voters. Here, the greater epistemic quality of secondary electors, and, therefore, indirectly elected offices was purportedly secured through different sets of qualifications. I have contended that in all likelihood, a

¹ Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve (London: Longman, Green, Longman, Roberts & Green, 1862[1835]), 233–34.

² *Ibid.*, 234

³ *Ibid.*, 235.

model of this sort that underpinned the American constitution-makers' expectations from the United States Senate. However, having dealt with legislative office qualifications in the previous chapter, I am now interested in why *indirect* elections, rather than such differential qualifications, could enhance the quality of political outcomes. Why, then, would a process of indirect election that retained identical qualifications for voters and secondary electors have any epistemic warrant?

The epistocratic advocate of indirect election would need to make at least two claims: firstly, that indirect elections tend to produce better decision-makers than those selected through direct election; secondly, that indirectly decision-makers would have the ability to take epistemically superior decision-makers, rather than remain tethered by epistemically inferior primary electors. The two corresponding phenomena that require explaining, then, are *refinement* and *untethering*.

2.1 TWO-STAGED ELECTIONS AND EPISTEMIC REFINEMENT

The refinement argument seems to depend on something like this: we are better at choosing decision-makers whose competence surpasses our own than we are at actually taking decisions. For instance, we are ordinarily better at choosing our doctor than, say, determining whether we ought to take Clarithromycin or Ofloxacin. Similarly, we are better at choosing a lawyer than we are at deciding whether we ought to lodge a petition under hypothetical section A or hypothetical section B of the Civil Rights Act. The ultimate decisions involved in these cases require more epistemic expertise than possessed by most of us. We are engaged in a variety of pursuits and occupy several roles, leaving us little time to acquire the competence that doctors or lawyers possess in their respective domains. However, we ordinarily perform well at choosing who ought to take our medical or legal decisions for us. Indeed, we might make mistakes in such decisions, too. We might end up choosing a doctor who is motivated by personal interest and unnecessarily prescribes a costly course of treatment. Occasionally, such mistakes can be costly and even irreversible. But all things considered, we would still do better to choose an expert in such matters than take those decisions ourselves. For now, let us accept this claim is a sound one. It is not hard to see why this might provide epistemic warrant for indirect elections. Voters are better at choosing persons who possess greater competence than themselves (secondary electors). Secondary electors, in turn, are better at choosing agents who are further competent than themselves (indirectly elected officials). I explore the plausibility of this argument in Section 3 of this chapter.

Before proceeding, it is worth addressing a possible objection to the view outlined above. One might insist that the argument about refinement merely provides warrant for *indirect* elections rather than *two-staged* elections. Why is it that two stages are sufficient to give us sufficiently competent actors rather than, say, elections conducted in three or four stages? This concern might reasonably be cast pressed against other democratic institutions. Two legislative chambers might indeed be better than one,

but would not tri-cameralism not be even better than a bicameral assembly? I am unsure if epistemic considerations point decisively in favour of two-staged elections even if we accept the underlying theory of refinement. Perhaps there are pragmatic considerations that might call for just two stages, rather than multiple ones. Elections are costly business. They require not just material resources, but also time. Given the need for dynamic decision-making in response to a fast-moving political world, perhaps we ought to settle in favour of epistemic refinement through two-stages. It is, at any rate, purportedly better than a one-step election.

2.2 UNTETHERING LEGISLATORS' JUDGMENTS FROM POPULAR PREFERENCES

In his criticism of indirect elections, Jeremy Bentham argued that 'An intermediate assembly 'withdraws the Members of the National Assembly entirely out of the reach and influence of the body of the people... Conceive a breach of trust ever so enormous: the traitor is perfectly out of the reach of anything they can do: the only person they can punish is an innocent man whom the traitor has deceived'.⁴ What Bentham and several others perceived as undemocratic and normatively suspect might, from an epistocratic perspective, be viewed as indirect elections' asset. After all, there is little point in securing more competent decision-makers through epistemic refinement if, ultimately, those in power are constrained by incompetent voters. But was Bentham right? Why would indirect elections untether decision-makers from the preferences of the primary electors? Why would decision-makers so-elected not, like directly elected representatives, act upon preferences they believed voters endorsed, or could be brought to endorse?

This is a particularly pressing question if we are to get to the heart of why indirect elections, under some cases, count as *epistocratic*. After all, democratically elected bodies, too, routinely defer to putatively superior decision-makers.⁵ They engage in a division of labour whereby, despite retaining the final word, they delegate part of their function to individuals or bodies that they consider more epistemically reliable. What distinguishes the indirect election of US senators from cases of indirect election that are compatible with the democratic control of experts? To see this more clearly, it is worth distinguishing the pre-Seventeenth Amendment American constitutional framework from frequently-used mechanisms of delegated legislation where democratically elected representatives empower indirectly elected experts with some decision-making authority. We can refer to the delegating authority as 'primary decision-makers', and those who hold delegated power as 'secondary decision-makers'. Cathrine Holst and Anders Molander see this kind of delegation to experts

⁴ Jeremy Bentham, "Projet of a Constitutional Code for France," in *Rights, Representation, and Reform: Nonsense Upon Stilts and Other Writings on the French Revolution*, ed. Philip Schofield, Catherine Pease-Watkin, Cyprian Blamires (Oxford: Oxford University Press, 2002), 245.

⁵ In the remainder of this chapter, I refer to wielders of delegated power as 'secondary decision-makers'. Why I refer to them as 'secondary' rather than 'primary' decision-makers is outlined below.

as a form of epistocracy, which they call ‘epistocracy by democratic delegation’.⁶ But this obscures important distinctions that exist between *delegation* to experts and the *transfer* of power to experts.

In most cases of delegated legislation, there exist restrictions on the *scope* of secondary decision-makers’ powers. Ordinarily, secondary decision-makers enjoy what I call *issue-autonomy* but not *domain-autonomy*. Issue-autonomy refers to the authority to take decisions within a specific domain. In most jurisdictions, secondary decision-makers enjoy only weak issue-autonomy. Their decision-making power is constrained by framework legislation, which lays down core principles to which they must adhere. When secondary-decision makers can take decisions untethered in this way, they can be said to enjoy strong issue-autonomy. Under delegated legislation, secondary decision-makers do not ordinarily enjoy domain-autonomy. Their authority is constrained to a particular range of issues *within which* they are more or less free to take decisions.

Primary decision-makers can also keep delegated decisions under check when those who hold delegated powers depend on them for their survival. That is, secondary decision-makers can be constrained by primary decision-makers when they can hold office only at the pleasure of the latter. This relationship of dependence can take either of two forms: the *power of recall*, or *the authority to eliminate indirectly elected offices*. The power of recall can extend to individual secondary actors, allowing primary decision-makers to replace current personnel without eroding the entire system of delegated legislation. In some cases, secondary actors enjoy autonomy to the extent that their appointments are rendered independent from the primary decision-making body. Once authority over some domain has been delegated to them, they cannot be removed from office at the whims of the delegating body. Even in such cases, there often remains a ‘nuclear’ option whereby primary decision-makers can withdraw the delegation mechanism altogether. They can altogether eliminate the rules through which power is delegated to a secondary set of actors. In other words, the secondary decision-makers are dependent on primary ones for their survival, but not vice versa. Of course, the option of eliminating the delegation mechanism might be constrained by political costs: primary legislators might hesitate in undertaking such a drastic step if they are likely to face widespread criticism. By the same token, they are free to do so when they are confident that this move would have popular support. Notably, the power of recall or elimination can constrain secondary decision-makers even when it is not exercised. Knowing that non-compliance with primary decision-makers’ preferences can result in either of these outcomes can ensure that secondary decision-makers are cautious about sharply departing from their bosses.

⁶ Cathrine Holst and Anders Molander, ‘Epistemic Democracy and the Accountability of Experts’ in *Expertise and Democracy*, ed. Cathrine Holst (Oslo: ARENA, Centre for European Studies, 2014), 18.

The pre-Seventeenth Amendment United States Senate enjoyed domain autonomy insofar as its legislative power was not constrained to any particular issue. Alongside the House of Representatives, it operated as the co-author of *any* legislation permissible within the framework of the American Constitution. Moreover, senators also enjoyed freedom from recall or elimination. Despite proposals to this effect, the Constitution denied state legislators the power to recall senators whom they had elected. Furthermore, the elimination of the Senate could only be brought about by a constitutional amendment with which the Senate itself must concur. Senators served, therefore, as indirectly elected officials who did not depend on their secondary electors for their survival. These points underscore the wide scope of the Senate's power and the extent of security that its members enjoyed.

One might insist at this point that although senators could not be recalled from office, nor eliminated from the legislative process, there remained one way of rendering them accountable to their secondary electors. By establishing periodic elections to the Senate, the American Constitution made senators accountable to democratically elected state legislators, who had served as their secondary electors. This, however, requires closer inspection. A combination of the respective tenures of senators and state legislators on the one hand, and the rate of turnover among state legislatures on the other, precluded this particular version of accountability.

Senators' six-year terms compared to state legislators' biennial terms meant that a senator would only be accountable to the secondary electors who selected him if they stayed in office long enough to do so. If a state legislator wished to have a vote on the senator's next term, he would have to serve in the state's legislature at least once more after the expiration of six years. In their study of indirect elections before the Seventeenth Amendment, Wendy Schiller and Charles Stewart III find that less than seventy percent of state legislators served only one term in either the House or Senate. Another twenty-three percent served only two terms, and merely ten percent served three or more terms.⁷ This meant that incumbent senators faced a secondary electorate almost entirely different from the one that had elected them six years before. So, state legislators qua secondary electors, had little capacity to retrospectively punish a senator who had strayed far from their preferences. Whether such a scenario would also untether the indirectly elected official from *popular preferences*, though, requires further examination. I turn to this question in the third section of this chapter. In sum, epistocracy operationalised through indirect elections attempts to do more than Holst and Molander's epistocracy by democratic delegation. In the latter, 'the delegation chain is triggered at some point by the people, so that the experts in questions arguably operate as their agents'.⁸ Indirect elections,

⁷ Wendy J. Schiller and Charles Stewart III, *Electing the Senate: Indirect Democracy before the Seventeenth Amendment* (Princeton University Press, 2014), 46.

⁸ Holst and Molander, *Epistemic Democracy*, 18.

however, attempt to transfer power to experts in a way that positions them as unconstrained decision-makers rather than ‘agents’ of the people.

2.3 SIDESTEPPING THE ‘DEVALUATION’ ARGUMENT

Before proceeding further, it is worth examining how indirect elections fare with respect to arguments offered against other epistocratic mechanisms discussed in the preceding chapters. In the first instance, indirect elections can sidestep objections levelled against epistocratic disenfranchisement in Chapter 5. There, I had argued that competence-based allocations of the vote incurred epistemic costs by disproportionately disenfranchising members from socially disadvantaged groups. Indirect elections do not risk excluding any group from the vote in a similar fashion. Insofar as they do aim to take power of electing legislators away from voters, they attempt to do so without discriminating between voters. Rather, they aspire to untether indirectly elected legislators from *all* voters, and not just those deemed incompetent.

Do the arguments made in Chapter 5 against competence-based qualifications for legislators also apply to epistocratic indirect elections? Such elections are premised on an assumption of epistemic refinement, whereby secondary electors vote for indirectly elected legislators on the grounds of competence. Would this process have a disproportionate impact on disadvantaged social groups? Much depends on the notion of ‘competence’ drawn on by secondary electors. As I argued in Chapter 5, competence tests aimed at tracking candidates’ knowledge of facts about a political system and policies inevitably disadvantage certain social groups. If secondary electors drew on a similar method of distinguishing competent from incompetent legislators, then the epistemic refinement involved in indirect elections, too, is likely to have a disparate impact on disadvantaged groups. However, epistemic refinement could work in other ways. Rather than applying a rigid ‘competence test’, secondary electors could draw on a more flexible understanding of what constitutes competence in the legislative domain. What allows them to do so, unlike developers of standardised competence tests, is the discretion they enjoy, and the ability to adjust their judgments. This offers them the ability to select legislators who, in their view, best understand the interests of disadvantaged groups. Indeed, they are susceptible to error in the exercise of such discretion. In assessing candidates’ competence, secondary electors might be led astray by putatively objective markers of competence like formal education. However, unlike legislative office qualifications, explored in the previous chapter, indirect elections do not limit the choice of legislators to those who satisfy competency requirements specified *a priori*. To that extent, there is at least a possibility that they will track legislators’ competence in a way that is conducive to the election of representatives from disadvantaged groups. Moreover, by avoiding such exclusion, epistocratic indirect elections can also sidestep the problem of devaluing disadvantaged groups that legislative office qualifications entail.

3. The Case against Indirect Elections

In this section, I argue that the idea that indirect elections result in the selection of more competent legislators who are untethered from ordinary voters' judgment is untenable. Consequently, indirect elections are likely to be a futile way of enhancing the quality of legislators.

3.1 EXAMINING THE REFINEMENT THEORY

3.1.1 *The Problem with Non-Exclusive Secondary Electors*

As I argued above, the underlying argument for epistemic refinement assumes that primary voters elect secondary voters based on their judgment of how well they would fare in electing (indirectly elected) legislators. This is because the case for indirect elections stems from the belief that voters lack the competence required to elect policy-makers for themselves. However, they can be relied on to judge *who* can better adjudicate between competing legislative candidates. Thus, primary voters must base their preference for a specific secondary elector *only* on the basis of his probability of choosing a competent-decision maker, rather than on their assessment of which policy ought to be enacted.

This assumption, however, seems to be at odds with the institutional design found in the pre-Seventeenth Amendment United States Constitution and the current Indian Constitution. Under both constitutions, citizens vote for state legislators, who, in turn, elect members of the federal upper chamber. Such state legislators constitute what I referred to as *non-exclusive secondary electors*. Rather than being their primary function, the election of a federal legislator is only one aspect of their role. Consequently, citizens' votes for a state legislator would not typically be based exclusively on their assessment of her abilities qua secondary elector for the Senate or Rajya Sabha. Rather, they would be driven by their evaluation of her ability to enact good policies for her state. This, in turn, entails some engagement with the merits of competing policy alternatives. So, voters' preference for a secondary elector under such circumstances would inevitably involve substantive judgments about policies, which constitutes a criterion forbidden by the refinement theory.

One might argue that this calls for an overhaul of indirect elections such that secondary electors have the selection of senators or Rajya Sabha members as their exclusive purpose. Secondary electors should not be vested with the responsibility of legislating for the state and electing members of the national legislature. Rather, there ought to be *exclusive secondary electors* whose only role involves selecting indirectly elected representatives. This account, however, encounters at least three distinctive challenges, which I explore below.

3.1.2 *Exclusive Secondary Electors: Three Problems for the Refinement Theory*

The refinement theory suggests that voters can appropriately adjudicate between competing secondary electors even though they are poor at choosing policy-makers. This is because their substantive judgments about competing policies are unreliable. But how exactly can voters, despite their ignorance, choose secondary electors more epistemically reliable than themselves? One might argue that a voter's judgments about appropriate secondary electors could be shaped by a range of cues without his having to rely on (his incompetent) judgments about policies. Presumably, such cues would pertain to factors like the competing candidates' ideologies or abstract policy principles, the previous outcomes of those candidates' choice of representatives, or the endorsements they receive from reliable sources such as relevant civic associations. These cues could act as 'crutches' for poorly informed voters, allowing them to select persons more competent than themselves to further elect competent decision-makers. In other words, this account draws a distinction between voters' *substantive cues*, or cues pertaining to substantive judgments about policies and *non-substantive cues*, which relate to judgments about an individual candidate's competence as a legislator. It suggests that the citizen can reliably use the latter but not the former.

The first problem for the refinement theory is that it seems impossibly difficult to separate voters' substantive judgments in a given domain from their preferences about secondary electors they deem most competent in that domain. Consider the cues that voters are likely to use in evaluating competing candidates in the secondary election. Voters must know, for instance, that commitment to a particular set of principles rather than another makes a specific candidate a better secondary elector compared to others. They must be able to adjudicate which civic associations' endorsements are relevant in choosing a secondary elector, and which ones are not. It is unclear how voters can draw upon these cues without, at the same time, exercising their own substantive judgment. The route to choosing a better decision-maker through secondary electors must travel through citizens' own judgments—even if in some limited way—about the policy decisions themselves.

Defenders of the epistemic value of democracy have long argued that voters' reliance on cues means that they are able to satisfy informational demands that the political process makes from them.⁹ Such accounts emphasise how voters who lack adequate knowledge can nevertheless make epistemically reliable political choices by relying on cues, which serve as 'shortcuts'. As such, the case for indirect elections overshoots its target. By insisting that voters can reliably draw on cues, the proponent of indirect elections actually makes room for faith in voters' substantive judgments.

⁹ Arthur Lupia, "Shortcuts Versus Encyclopaedias: Information and Voting Behavior in California Insurance Reform Elections," *American Political Science Review* 88, no. 1 (1994): 63–76; Goodin and Spiekermann, *An Epistemic Theory of Democracy*, 178–94.

In doing so, she risks undermining anxieties about voters' ignorance that motivated the case for indirect elections in the first place.

At the same time, insisting that cues about a person's competence as a secondary elector should be starkly distinguished from cues about the merits of his substantive preferences, fails to assure us that the former judgments have any epistemic warrant. Consider, for example, an extreme case where secondary electors were prohibited from expressing any judgments about political issues. Suppose we also eliminated from the secondary contest all candidates who had expressed any views on policy or legislation in the past. Voters have a blank slate to choose from, untainted by any assessment of such candidates' political preferences. There seems to be no reason why we should view voters' choice under such circumstances as likely to track the best secondary electors for a law-making body. On the contrary, we ought to worry that voters' choices are likely to be guided by irrelevant considerations that have little to do with their preferred individuals' capacity to choose good policy-makers.

A final qualification to this argument is in order before proceeding. So far, I have argued that drawing on appropriate (non-substantive) cues about secondary electors' ability to choose competent decision-makers requires some substantive competence about the decisions at stake. Indeed, in some circumstances, the *substantive competence of experts* can substitute for those of laypersons in the selection of appropriate cues. Patients, for example, reliably choose General Physicians (GPs) who then refer them to a competent specialist doctor. Here, the relevant cue is the possession of a medical license, seen by patients as a reliable indicator of one's ability to choose a competent medical specialist. But patients do not need to sift through valid and invalid authority-claims about who is or is not a GP. In the first instance, cues concerning medical authority are tightly regulated, so that only those who satisfy specific qualifications can claim medical expertise. So, quacks are not permitted to refer to themselves as General Physicians. Further, quacks' ability to contest current allocations of epistemic authority, too, is constrained by strict regulations of truth-claims in medicine. So, not only are quacks prevented from calling themselves physicians, but they are also prevented from making truth-claims to the effect that they *should* be recognised as medical experts. They cannot, for instance, claim that some non-efficacious treatment is a scientifically validated one. Were they to do so, they would be risk penalties if not prosecution by the state. These restrictions help ensure that patients continue to trust medical experts rather than being led astray by non-experts' medical judgments. In sum, the reliability of cues is a function of substantive judgments about the domain in which those cues help choose decision-makers. When these substantive judgments are made by experts, strict conditions must be in place to ensure that they cannot be undermined. This, in turn, requires not just gate-keeping in the form of qualifications, but also restrictions on speech to prevent counter-discourses aimed at questioning the current regime of epistemic authority. The imposition of similar extensive restrictions in the broader domain of

political speech is questionable to say the very least. In any case, my point is that we would be misguided in relying *merely* on non-substantive cues to help choose competent decision-makers.

A second problem for the refinement theory is that it cannot ensure that voters act in the manner that it presupposes. Suppose that, despite our inability to distinguish between the two kind cues, the proponent of indirect elections could offer a menu of cues that voters can be trusted with, and those on which their judgment has little epistemic value. Let us assume that there do exist two distinctive kinds of cues, substantive and non-substantive. Let us also concede that it is possible to outline non-substantive cues that the voter must be guided by, and substantive ones that she ought to overlook while assessing candidates in a secondary election. There is no way, though, of preventing voters from acting on one kind of assessment rather than another. We cannot get inside each voter's head and compel her to think only about who would make a better decision-maker, and block her from thinking about which policies she prefers, and who would better pursue these. How can we prevent the following phenomenon, Mill asked, whereby 'the voter would prefer to use his own judgment in the choice of a representative, and only lets another choose for him because the law does not allow him a more direct mode of action'.¹⁰ After all, he insisted, 'if this be his state of mind; if his will does not go along with the limitation which the law imposes, and he desires to make a direct choice, he can do so notwithstanding the law'.¹¹

In extreme cases, this can turn substantively indirect elections into nominally indirect ones, where the voter chooses a secondary elector premised on that elector's promise of selecting a specific indirectly elected legislator. Indeed, as legislators emphasised in debates over the Seventeenth Amendment to the American Constitution, something of this sort had already started to occur for elections to the Senate. At the turn of the nineteenth century, and shortly before the Seventeenth Amendment was enacted, various states had instituted mechanisms aimed at rendering indirect elections, in effect, popular votes. In 1901, the 'Oregon Plan' set up a straw election for Senate, whereby voters selected among competing candidates, and state legislators were bound to adhere by the outcome of that vote in the state legislative election. Prescriptive elections of this kind were soon adopted by 13 other states. In less extreme circumstances, where elections remain substantively indirect, voters' preference for particular kinds of indirectly elected legislators can dominate their choice of a given secondary elector. In either case, institutional design can do little to separate indirectly elected legislators from the kind of decisions voters wish to enact.

Thirdly, there is little reason to think that voters would be better at assessing secondary electors than policies *under similar conditions*. Why is it that voters are

¹⁰ John Stuart Mill, *Considerations on Representative Government*, 483.

¹¹ *Ibid.*

considered unreliable judges of decision-makers, and, therefore, suitable for participation in direct elections? Part of this has to do with their inability to sift valid from invalid claims to epistemic authority and arrive at competent judgments about policy. Such inability, however, is not an intrinsic feature of citizens' capacities, but a function of their epistemic environment. When voters hold the key to political power and the realisation of certain political outcomes, a variety of actors have reason to convince, or even manipulate, them to act in specific ways. In doing so, such actors raise the degree of competence that voters need in order to adjudicate between conflicting claims and arrive at appropriate political judgments. After all, voters require much greater competence to evaluate competing alternatives when there exist many different claims about the correctness of each proposal. Now, the very factors that distort such judgments, impairing voters' inability to assess between competing alternatives, could very well be replicated in their decisions over secondary electors. This is because, under indirect elections, manipulating the choice of citizens' preferred secondary electors can become pivotal to securing the election of certain legislators, and, therefore, the realisation of specific outcomes. So, the very same epistemic environment that conditions voters' choices in direct elections, rendering them allegedly unable to take competent judgments, is likely to obtain in a system of indirect elections.

3.2 EXAMINING THE UNTETHERING OF SENATORS

As I previously argued, from the epistocrat's perspective, indirect elections cannot simply rely upon the selection of legislators more competent than those chosen through direct elections. Rather, they must enable indirectly elected legislators to act with leeway, untethered from the preferences of allegedly incompetent primary voters. I have previously highlighted mechanisms through which indirect elections can render indirect representatives unresponsive. I now emphasise the limits of those mechanisms, demonstrating why indirect elections are, in fact, unlikely to render representatives unresponsive to the preferences of primary voters.

Recall that the untethering of indirect representatives relied on a combination of the institutional features and contingent circumstances of a political system. The first of these might be made a feature of the democratic system through constitutional design. As I previously noted, longer terms for indirectly elected offices alongside shorter terms for secondary electors can facilitate this. However, the other contingent circumstances on which untethering relies are harder to manufacture. I argued that indirectly elected representatives can enjoy leeway from their secondary electors when the body comprising such electors is characterised by low incumbency rates. Further, high turnover also allows secondary electors to vote for a senator without having to worry about the consequences of his preferred candidate's election over the course of his six-year term. Under conditions of careerism in politics, and low

turnover rates, both, senators and indirectly elected legislators do not enjoy such kind of latitude.

More importantly, as legislators emphasised in debates over the Seventeenth Amendment in America, and the Constituent Assembly Debates in India, the rise of the political party substantially alters the dynamics of indirect elections. In order to better appreciate the salience of the party and its impact on indirect elections, it is worth examining the history of senatorial elections in the United States. Writing on indirect elections in America, James Bryce notes that:

Choice by a legislature had come to mean choice by a party majority in a legislative caucus, and the determination of that caucus had often been prearranged by a small group of party managers; or if that did not happen secretly, it had been settled in a party convention which directed the members of the party in the legislature how to cast their votes. There was anyhow little room left for free selection by the legislature. The people or rather those wire-pullers who manage the people and act in their name had usually settled the matter beforehand. So hard is it to make any scheme of indirect election work according to its original design; so hard is it to keep even a written and rigid constitution from bending and warping under the actual forces of politics.¹²

Parties undermine the ‘untetheredness’ of indirectly elected officials in at least three ways. In the first instance, the political party can ensure that, as secondary electors, legislators remain accountable to primary voters. It does this by socialising individual actors into a set of normative beliefs that entail certain patterns of behaviour without the need for external sanctions. Partisan state legislators are likely to vote for a senator closely allied to the substantive programmatic beliefs of their respective political parties. Even if they could vote for senators without having to worry about voters’ response to who they elect, they are likely to do so in a manner consistent with their party’s programme because of their socialisation into their party’s system of beliefs. This factor is particularly strong when legislators have also been selected by the party on the basis of the strength of their commitment to its programme. Alongside their substantive commitment to the party’s programme, actors can also feel a sense of loyalty towards their co-partisans. This can reinforce their tendency to act in accordance with the party line rather than their own substantive judgments. Similarly, senators, even if they do not face sanctions from state legislators (by virtue of their high turnover), would likely behave in a manner consistent with their party’s beliefs, and out of loyalty towards co-partisans.

Second, political parties are also able to control legislators’ behaviour, leaving them constrained in their choice of indirectly elected officials. Parties derive support from voters with the promise of doing as best as they can to implement a particular

¹² James Bryce, *The American Commonwealth*, with an Introduction by Gary L. McDowell, (Indianapolis: Liberty Fund, 1995[1888]), 1: 90.

programme. If they depart from that programme, voters can hurt their prospects at the next election. Indeed, individual legislators, too, are similarly motivated by the threat of electoral sanctions and rewards. But note a crucial difference between the two. Parties are ordinarily more stable entities across time than individuals who serve legislative office. They can stand to lose from their legislators' actions whether or not those individuals remain in office. In order to ensure that individual actors do not threaten the wider organisation's relationship with voters, party leaders wield a range of mechanisms aimed at exercising control over their rank-and-file. They are able to affect things like the degree of influence some individual holds within the party, the probability of her re-election, and the kind of political visibility she enjoys. Such mechanisms can enable parties to exercise considerable influence on legislators' actions qua secondary electors. Further, they also allow parties to exert influence directly on the decisions of indirectly elected members with which they are affiliated.

Finally, parties also ensure that there is continuity within the state legislative assembly (or secondary electorate) regardless of the individuals of whom it comprises. Even if individual secondary electors change as a result of high turnover rates, indirectly elected officials can be held accountable by secondary electors as long as the partisan composition of the intermediary body remains stable. Senators can no longer renege on commitments made to the legislators who chose them, confident that their electors would no longer be in office by the time the next election is held. This is because those legislators' co-partisans can hold senators accountable.

4. Conclusion

The two arguments made in this chapter are closely connected. The first suggests that voters' substantive judgments play a role in the process of electing indirectly elected officials. Voters cannot, and are unlikely to, vote for indirectly elected legislators with little regard for such legislators' substantive policy preferences. Engaging voters in the political process but that does so in a way that abstracts from the decisions they wish to see enacted is an implausible task. The second argument, about the salience of political parties, demonstrates how indirectly elected legislators can be held accountable for voters' preferences. Because such preferences matter to voters, secondary electors and indirectly elected officials have good grounds to show fidelity towards their voters' substantive policy judgments. Parties, which mediate between voters and elected representatives, offer a mechanism for better enforcing such fidelity.

One might argue that my argument has only demonstrated that indirect elections are *futile* in attempting to select competent legislators. There is, however, no harm in electing legislators in this manner. However, there is another point we ought to take from the futility argument. As a stand-alone attempt to enhance the competence of legislators, the use of indirect elections is indeed *merely* futile. However, in India and in the United States, indirectly elected chambers were not adopted as exclusive

legislative devices. Rather, they were embedded in a bicameral legislature. As I argued in Chapter 4, part of the point of a second legislative chamber was to introduce a *second opinion* on laws enacted by the law-making body. My argument in this chapter has tried to show that, by replicating popular input, as is already available in directly elected chambers, indirectly elected assemblies fail to offer a substantially different kind of perspective on the legislative process. As critics of the bicameral framework in India argued, this rendered the second legislative chamber an expensive, futile exercise, with little to offer. Consequently, the futility of indirect elections is an epistemic problem insofar as it deprives us of an opportunity to re-examine laws enacted by a democratic assembly. I return to this issue in the concluding chapter.

8

Conclusion

Epistocracy has a long-standing relationship with constitution-makers concerned about competence in legislative assemblies. My aim in this thesis has been to offer just a glimpse into this history, and provide a normative assessment of some constitutional mechanisms that instantiate this relationship. In the concluding chapter, I offer a brief summary of the key arguments of the thesis. Next, I reconsider the notion of ‘competence’, prevalent in the literature in political science and contemporary democratic theory, that the thesis has so far taken for granted. I argue that there are good grounds for demonstrating greater scepticism towards this notion. Finally, I turn to some avenues for further theoretical research that this thesis points towards.

1. Connecting the Dots

The first part of this thesis underscored how epistocratic institutional innovations are scarcely novel. The narrative offered here is, of course, only the tip of the iceberg. Part of my aim here has been to demonstrate how the epistocratic mechanisms adopted in different jurisdictions influenced each other. Further research could shed greater light on constitutional borrowings of this sort, greatly multiplying examples of epistocratic constitutional mechanisms. Having access to such examples is particularly important for a fairer debate on the epistemic potential of democracy. So far, it has been easy for critics of democratic institutions to point to their failures, evidenced by turbulent political events in present times, as a mark of their irredeemable epistemic character. In this context, it is worth remembering that epistocracy is not a novel alternative. Rather, it has historical precedents, which, too, can be assessed by the same yardstick that critics apply to contemporary democratic institutions.

The first part of this thesis also highlighted how, historically, bicameralism was implicated in the incorporation of epistocratic constitutional mechanisms. In America and in India, for instance, the second chamber was designed to house legislators deemed more competent than the average representative chosen through popular elections. The Senate and the Rajya Sabha attempted to secure the presence of such representatives either through indirect elections, legislative office qualifications, or—as in the Indian case—a combination of both. In Britain, too, the absence of a bicameral check was cited as an argument for restricting the suffrage to competent voters. Here, the argument went, since Britain did not have a second chamber with veto power, it was important to ensure that members of the House of

Commons were selected by competent voters. The lesson we might take from this is that a second chamber ought to be seen as a normatively suspect institution, historically fashioned as an exclusionary constitutional device. However, the founding debates over the American Constitution also remind us that there is an alternative on this front. We could conceptualise bicameralism as a division of legislative labour. Rather than viewing a second chamber as an opportunity for excluding allegedly incompetent legislators, it is possible to view it as a chance for obtaining second opinions, and mitigating costs associated with institutional features of the first chamber. I return to this point in the third section of this chapter.

Let me now turn to the conclusions derived from the second half of this thesis. Critics of epistocratic measures, including those studied in this thesis, have traditionally advanced two different lines of argument. The first suggests that political exclusion is damaging because those who hold power would be left free to pursue their own interests, neglecting those of excluded groups. The second line of criticism suggests that the problem with political exclusion is not so much that those who hold power would use it to further their own interests. Rather, when some group of people is politically excluded, those charged with taking decisions would fail to understand this group's interests. I have argued that we need not make a stark distinction between the argument from interests, and the argument from epistemic failure. Epistemic failure can arise because self-interest can lead socially advantaged groups to avoid, and, therefore, fail to understand, disadvantaged groups' circumstances. They can act, from their perspective, in the best interests of the disadvantaged without realising that deep-seated interests lead them to epistemic failure. Because they have an *interest in not knowing* what is in the interests of disadvantaged groups, and the implications this has for their own circumstances, they are likely to demonstrate *lack of understanding*.

The normative argument presented in this thesis has also tried to bring together two other seemingly disjointed sets of arguments. The first of these insists that competence-based exclusion is wrong because it *devalues* persons' worth. There is something morally wrong with accepting a political system that deems some citizens superior, while relegating others to an inferior status. The guiding ideal here is political equality, which takes priority over the epistemic performance of a political system. The second account suggests that competence-based exclusion is undesirable because it would result in the neglect of the interests of excluded groups. Following the synthesised argument presented above, one could suggest that it would worsen epistemic avoidance, allowing advantaged groups to easily avoid deliberating on the interests of the disadvantaged. In other words, the second type of argument emphasises the *epistemic costs* that would follow from excluding disadvantaged groups from the suffrage or legislative office. I have tried to argue, though, that there is a strong link between arguments concerning devaluation, and the epistemic impact of competence-based exclusion. Because exclusion on the grounds of incompetence

further the devaluation of already disadvantaged groups, it is likely to *worsen adequate consideration of their interests*, which is in any case threatened by epistemic avoidance.

Finally, Chapter 7 attempted to show why the epistocratic case for indirect elections rests on inconsistent premises. This case cannot rely on the assumption that voters are, both, competent in evaluating appropriate secondary electors and incompetent in assessing policies. For voters to make competent judgments in the choice of secondary electors, they must demonstrate some substantive competence concerning policies. If not, then they risk deciding between competing candidates on epistemically irrelevant grounds. Moreover, the epistocrat's attempt to untether indirectly elected officials from popular judgment is doomed to failure. With the professionalisation of politics, the secondary electorate for such elections is far more stable than it was at the inauguration of America's Constitution. Indirectly elected officials today would not have faced an entirely new set of electors at the end of their respective terms. Rather, they would have been accountable to a relatively stable group of law-makers who, in turn, were directly accountable to ordinary voters. Further, the rise of the political party reinforces the chain of accountability between primary electors, secondary electors and indirectly elected officials. If the point of the second chamber is to filter law-making through more competent law-makers than those chosen through popular elections, this exercise would be futile. However, there is more to the case for a second legislative chamber. I return to this point shortly.

2. The Challenge of Defining Competence

As the first half of this thesis underscored, constitution-makers face a range of challenges when they attempt to define 'competence' in ways that distinguish competent from incompetent voters or legislators. In the first instance, they must establish criteria for what counts as competence. This is an unquestionably complex problem. Like I noted in Chapters 2 and 7, conceptions of competence can be closely linked to one's substantive view of the political world. If one views free trade, or the law of primogeniture as irrevocably justified, then one's parameters for competence are likely to be framed in a manner that excludes those who dissent from these perspectives. Further, even once constitution-makers agree on a criterion or set of criteria characterizing competence, they face the further challenge of defining an appropriate test for this purpose. There is no straightforward link between one's conception of competence and an appropriate test for capturing such competence. Constitution-makers may, for instance, agree that the ability to read or write marks some actor as a fit bearer of political power, rendering her able to participate in deliberation over policies. However, they may continue to disagree how reading or writing ought to be tested. Should a test for this purpose emphasise one's ability to read out a given text? Should it focus one's comprehension of that text? Should it give greater priority to one's ability as a writer? Finally, even when constitution-

makers negotiate a specific test, there remains the question of the threshold of competence a prospective voter or legislator must satisfy before she can be considered competent.

Although I flagged up such questions in the first part of the thesis, the normative argument in the second half proceeded with the assumption that such questions were tractable. It took on face value the conceptions of competence prevalent in empirical political science, and, consequently, normative work on epistocracy. I tried to argue that, even if one took such assumptions as unproblematic, epistocratic mechanisms are unjustified. However, there are good grounds to probe further and refuse to uncritically accept what passes for competence in the current literature.

The empirical literature that purports to demonstrate voters' political ignorance is often silent about the criteria it employs to assess their knowledge. It tests citizens' knowledge of certain facts without an underlying theory of why these are relevant in assessments of citizens' competence. As Arthur Lupia argues, surveys can only enumerate facts that may be sufficient in holding the kind of knowledge citizens need to make competent judgments. They do not, however, offer, or even pretend to offer, necessary conditions for voting competently.¹ For any such list of facts that these surveys enumerate—say X, Y and Z—there may be several other facts, knowledge of which could allow citizens to arrive at competent judgments. Indeed, we might view them as *proxies* for competence rather than as preconditions for competent voting. But the tests used by surveys of political knowledge, too, offer grounds for scepticism. As critics have argued, such surveys tend to reduce political knowledge to a 'trivia' quiz, which fails to capture much of what citizens actually know about politics.² Philip Converse, whose own work draws on surveys highlighting citizens' alleged ignorance, admits that even those who perform poorly on such surveys may nevertheless 'have a substantial level of apperceptions about the national political world, such that with proper interviewer probing they could talk non-repetitiously about it for significant spans of time'.³

Second, following from the above point, the three-step procedure involved in operationalising a competence test ensures ample room for subjective judgment. Notably, the context of a competence test for legislators and voters differs from the situation in which political scientists and activists, hoping to gauge citizens' knowledge, find themselves in. The stakes are much higher in the former. Consequently, the kind of errors that attend judgments inflected with potential consequences for one's interests are also more likely. The problem runs deeper than epistocrats appreciate. The challenge lies not only in defining competence, but also

¹ Arthur Lupia, "How Elitism Undermines the Study of Voter Competence," *Critical Review* 18, nos. 1–3 (2006): 222.

² Doris A. Graber, "Why Voters Fail Information Tests: Can the Hurdles Be Overcome?," *Political Communication* 11, no.4 (1994): 341;

³ Philip E. Converse, "Assessing the Capacity of Mass Publics," *Annual Review of Political Science* 3, no.1 (2000): 333.

of specifying a test and an appropriate threshold. This multiplies, both, opportunities for error as well as rigging. It makes way for what Uday Mehta calls ‘strategies of exclusion’, where those in power can delineate gaps between persons’ empirical abilities, and normative conditions they must satisfy if they are to enjoy status and power equal to others.⁴ As my analysis of epistemic avoidance underscores, socially advantaged groups in a society have good reason to entrench such exclusion. This is likely to vitiate not just their substantive engagement with disadvantaged groups’ interests, but also procedural decisions concerning what competence comprises, how it should be tested, and what threshold of success on the test candidates should demonstrate. If, as I highlighted, advantaged groups tend to avoid engaging with marginalised groups, then excluding them through any of three steps outlined above offers a straightforward way to do so. Their judgments, even when they are not recognisably driven by such incentives, are considerably more likely to be influenced by their interest in epistemic avoidance.

Third, any attempt to operationalise competence tests for voters or legislators is vulnerable to the kind of meta-ignorance which, according to epistocrats, renders most citizens irredeemably incompetent. Jason Brennan, for instance, argues that most voters comprise a personality-type which he calls ‘hooligans’.⁵ Hooligans, unlike apathetic citizens, consume political information, although in a biased manner. They seek out information which confirms their pre-existing opinions, but ignore, evade or reject evidence that contradicts those opinions. Such voters feel strongly about political issues and ‘tend to despise people who disagree with them, holding that people with alternative worldviews are stupid, evil, selfish, or at best, deeply misguided’.⁶ The problem with hooligans is not merely their ignorance. Rather, they demonstrate a form of meta-ignorance insofar as they do not know how little they know. They are overconfident in themselves and how much they know about politics. If this indeed characterises a majority of voters in democratic societies, then the challenge in enforcing a competence test runs deeper than the epistocrat recognises. From the perspective of the hooligan, his own exclusion would be unacceptable: after all, the problem lies with others’ ignorance. The hooligan views himself as perfectly informed about the political world, and holds strong opinions like a ‘rabid sports fan of politics’.⁷ He would dismiss any conception of competence, test aimed at operationalising that conception, or stipulated threshold that excludes him as fundamentally wrong. A large majority, therefore, would perceive epistocratic mechanisms as ‘rigged to favor their enemies, or blessedly designed to oppress their

⁴ Uday S. Mehta, “Liberal Strategies of Exclusion,” *Politics & Society* 18, no. 4 (1990): 427–54.

⁵ Brennan, *Against Democracy*, 5.

⁶ *Ibid.*

⁷ *Ibid.*

enemies’.⁸ This renders any attempt to enforce epistocratic constitutional devices socially unstable.

3. Rethinking Legislative Design: The Way Forward

I conclude the thesis by offering some reflections on the way forward for research concerned with enhancing the epistemic capacities of legislatures. In particular, I comment on the potential of randomly selected assemblies to complement popularly elected legislative bodies and the opportunities offered by a bicameral legislature on this front.

3.1 DIFFERENT MODE OF COMPOSING THE SECOND CHAMBER

The incorporation of indirect elections stemmed from concern that the judgment offered by popularly elected assemblies would be epistemically inadequate, and, therefore, required oversight from a body of more competent legislators. Constitution-makers in America and India believed that selecting legislators in a different way, rather than relying on popular elections, offered an opportunity to secure epistemically superior legislators. I argued that this attempt was ultimately futile. We cannot justifiably expect indirectly elected assemblies to offer better judgments than their directly elected counterparts. What should we do, then, if we remain concerned about the epistemic quality of decisions that stem from popularly elected legislatures? Indeed, the constitution-makers were right, despite their futile attempt, in suggesting that something ought to be done about the *manner* in which legislators were selected. If we were to rectify the epistemic deficiencies attached to a popularly elected chamber, then a chamber aimed at addressing these could not also be elected in the same fashion. This insight remains important, and can continue to guide our reflections on legislative design.

In recent times, political theorists have pointed to randomly selected assemblies as a possible alternative to democratically elected legislative bodies. ‘Sortition chambers’ of this sort can avoid, both, the perversity argument and the futility argument. Randomly selected legislatures are not epistemically self-defeating, because, firstly, they do not run into objections about devaluation of socially disadvantaged groups. They can overcome concerns about devaluation because they do not exclude any groups of people on the grounds of incompetence. Participation in a sortition chamber does not presuppose any stipulated criterion of competence that ordinary citizens must first satisfy. Indeed, such bodies can risk excluding numerical minorities, but this does not involve stigmatising them as *incompetent* in the way that epistocratic mechanisms do. Secondly, sortition chambers can ensure the descriptive representation of disadvantaged groups by setting aside places for their members. If anything, they are better placed than democratically elected legislatures

⁸ Robert B. Talisse, “The Trouble with Hooligans,” forthcoming in *Inquiry*.

with similar quotas, at ensuring that those most representative of such groups' perspectives find a place in the legislative body. This is because they avoid the latent exclusionary effects that accompany electoral processes inevitably bound up with social and economic privileges.

Sortition chambers also avoid concerns about futility to which indirectly elected bodies are subject. Indirect elections, as I argued in Chapter 7, attempt to untether legislators' judgments from those of ordinary voters, but fail to do so. However, randomly selected legislatures offer a genuine opportunity to disconnect decision-makers from the potential of sanctions by voters. But, one might ask, how can they offer a judgment different from that of ordinary voters if sortition chambers are composed of a subset of those very voters? The key lies in the deliberative effect of sortition chambers. As I argued in Chapter 5, smaller assemblies can overcome some of the epistemic obstacles necessarily attached to mass deliberation. They ensure better epistemic performance, first, by ensuring greater accountability among participants, and second, by offering greater opportunities for learning.

These comments are not entirely speculative. Rather, they are supported by several deliberative experiments, where randomly selected citizens have been tasked with offering advice on complex political issues. The empirical evidence from such studies indicates that assemblies composed in such manner demonstrate good epistemic performance. They satisfy various criteria that we might use for their epistemic evaluation, such as acquisition of information in the deliberative process, egalitarian inclusiveness, and tendency towards reason-based rather than interest-based decision-making.⁹

This thesis helps clear the way for serious consideration of calls for the incorporation of sortition in legislative design by emphasizing how experimentation with a different mode of selecting legislators has precedents in the history of constitution-making.

3.2 FACTORING PARTISANSHIP INTO LEGISLATIVE DESIGN

Constitution-makers in America and India neglected how party politics would affect their attempt at designing epistocratic second chambers. Participants in the Seventeenth Amendment debates in America, and some critics of indirect elections in the Indian Constituent Assembly perceived this point more clearly. They insisted that a second chamber, working under similar conditions of partisan dynamics that characterised popularly elected legislative assemblies, could not offer a superior

⁹ See, for instance, André Blais, R Kenneth Carty & Patrick Fournier, "Do Citizens' Assemblies Make Reasoned Choices?," in *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*, ed. Mark E Warren and Hilary Pearse (New York: Cambridge University Press, 2008), 144; Mark Warren, "Citizen Representatives," in *Designing Deliberative Democracy*, ed. Warren and Pearse, 50–69; David M. Ryfe, "Does Deliberative Democracy Work?," *Annual Review of Political Science* 8, no. 1 (2005): 49–71; Robert C. Luskin, James S. Fishkin, and Roger Jowell, "Considered Opinions: Deliberative Polling in Britain," *British Journal of Political Science* 32, no. 3 (2002): 455–87.

judgment. Rather, it would merely duplicate the kind of judgment that elected partisan legislatures provided. I argued in the fourth chapter that this suggestion potentially undermines every argument for the bicameral division of labour. When legislative decisions are determined by party leaders, this undermines (1) the second opinion value of the second chamber, (2) the second chamber's capacity to offer judgment produced under different institutional features from the first, and (3) epistemic dividends that stem from the selection of more competent legislators in the second chamber.¹⁰ Although the third of these goals is normatively suspect in the light of our analysis in the previous chapter, we could nevertheless value bicameralism for its ability to offer *second opinions* and perspectives produced by a *deliberative process designed in a different manner* from the first legislative chamber.

Those concerned with legislative design, and especially bicameral division of labour must, therefore, factor in the effects of partisanship on the operation of law-making bodies. Once again, sortition chambers potentially offer a way out. Such chambers offer the opportunity to enact legislation without the kind of partisan organisation found in elected legislative assemblies. Individuals chosen to participate in such assemblies act qua individuals rather than as members of a party caucus. This allows the sortition assembly to embody 'the deliberative ideal of autonomous agents swayed by the force of the better argument' rather than succumb to the constraints of partisan considerations.¹¹ Consequently, it allows the legislative process to benefit from a genuine second opinion rather than replicating the decision of party whips enforced in both chambers of parliament. Moreover, it allows the legislative process to benefit from the perspectives of two assemblies, constituted in contrasting ways, rather than allowing party whips to affirm their decisions twice and undermine the epistemic advantages distinctive to the design of deliberation in each chamber.

At the same time, although contemporary democratic theorists find the absence of organised parties an attractive feature of sortition chambers, we cannot afford to neglect the value of partisanship for democratic decision-making. As political scientists have long pointed out—and normative political theorists now concur—political parties play an important role in setting the agenda for decision-making.¹² Agenda-setting requires, both, *expansionary* moves aimed at searching for new and better alternatives to put on the menu for decision-makers, and a *restrictive* approach, aimed at winnowing alternatives, so that more careful attention can be dedicated to each item on the menu. If the correct item is not part of the available choices, then decision-makers cannot vote for it. The expansionary approach helps ensure that the

¹⁰ For more on this, see Udit Bhatia, "Cracking the Whip: The Deliberative Costs of Strict Party Discipline," forthcoming in *Critical Review of International Social and Political Philosophy*.

¹¹ David Owen and Graham Smith, "Sortition, Rotation, and Mandate: Conditions for Political Equality and Deliberative Reasoning," *Politics & Society* 46, no. 3 (2018): 419–34.

¹² Jonathan White and Lea Ypi, *The Meaning of Partisanship* (Oxford: Oxford University Press, 2016), 76–100; Martin Ebeling, "Epistemic Political Egalitarianism, Political Parties, and Conciliatory Democracy," *Political Theory* 44, no. 5 (2016): 629–56.

epistemically appropriate decisions constitute part of the choice-set that decision-makers are offered. On the other hand, having too many options on the agenda can be potentially confusing. The restrictive approach performs the epistemically valuable task of presenting decision-makers with fewer options, enabling them to perceive the correct one more reliably. As Robert Goodin and Kai Spiekermann argue, parties facilitate both tasks, by ‘searching out new and better alternatives to put onto the agenda...but also in winnowing the agenda to be voted on’.¹³

As the salience of political parties obtains growing recognition, some proponents of sortition chambers have now insisted that there is no need to choose between random selection and partisan organisation in the design of a legislature. Rather, it is possible for randomly selected participants in sortition chambers to organise themselves into parties.¹⁴ The legislative assembly can, therefore, avoid the epistemic drawbacks associated with the popular election of representatives, while maintaining the advantages associated with organised partisanship. However, there are good grounds for suspecting that a sortition chamber of this sort would be less effective at agenda-setting than a popularly elected one. First, ‘sortition parties’ would *lack the stability* of parliamentary parties in elected chambers. Members of sortition parties would opt in to a partisan camp *after* they have been selected to serve in the legislature. They would lack the abiding ties that characterise members of a parliamentary party. Such connections enable political parties to socialise candidates for parliamentary elections—and therefore members of the parliamentary party—into their programmatic commitments and norms. Members of a sortition party would also lack the pre-commitment that characterises the legislative work of parliamentary parties. Prior commitment serves to constrain the extent to which decision-makers find themselves able to depart from platforms they have framed together with their co-partisans. As such, the features that enable parliamentary parties to organise themselves in a stable manner along partisan lines are likely to remain absent in sortition chambers even if its members were to try and align themselves with particular parties.

Second, sortition assemblies *lack the inclusiveness* required to perform the complex exercise of agenda-setting. Here, one might wonder why how we can show faith in sortition assemblies’ ability to take substantive decisions on particular issues, despite their relative exclusiveness, while expressing concerns that they are not inclusive enough to set agendas? This stance, however, is not contradictory. It is worth remembering that the empirical evidence that shows randomly selected assemblies in favourable light says little about their agenda-setting capacities.¹⁵ It demonstrates that once agendas have been framed for such assemblies, they tend to deliberate well on specific issues. Settling the agenda allows us to provide participants

¹³ Goodin and Spiekermann, *An Epistemic Theory of Democracy*, 291

¹⁴ John Gastil and Erik Olin Wright, “Legislature by Lot: Envisioning Sortition within a Bicameral System,” *Politics & Society* 46, no. 3 (2018): 319–20.

¹⁵ Owen and Smith, *Sortition, Rotation, and Mandate*, 425.

in such bodies with information, weed out relevant from irrelevant inputs, and weigh the value of different kinds of information against each other. Without such learning, there would be good grounds to worry that citizens, otherwise more or less loosely concerned with political life, are poorly placed to take important decisions. But this learning process is possible precisely because an issue has been deemed relevant in the first place. Were this not the case, members of such an assembly would face a potentially vast, unworkable degree of information in assessing which issues deserve their attention and which ones are less important. The narrow issue-based limits placed on their deliberations make possible the conditions that render sortition chambers epistemically reliable.

Political parties, by contrast, are better placed to perform the complex exercise of framing the legislative agenda. In the ideal scenario, the agenda is shaped through democratic deliberation within various party fora like local branches and party committees.¹⁶ In fact, parties' incentive to mobilise constituents with the aim of electoral success, makes them vehicles of mass participation, requiring them to include as many people as they can bring on their side.

In sum, any attempt at legislative design must be mindful of, both, the epistemic costs as well as benefits that follow from the partisan organisation of law-making assemblies. Bicameralism, again, offers the opportunity to benefit from an elected chamber which brings with it the advantages of partisanship, while avoiding its associated disadvantages through a sortition chamber. The appropriate relationship between political parties, elected chambers, and randomly selected assemblies requires significantly more attention than it has hitherto received. I hope to have demonstrated, first, how its neglect can be particularly damaging for the epistemic potential of the bicameral division of labour. Further, I hope to have demonstrated that bicameralism offers the opportunity to negotiate the double-edged sword of partisanship.

As these comments indicate, much remains to be done insofar as we are concerned with the epistemic quality of legislative assemblies. I have attempted, through this thesis, to demonstrate why certain kinds of proposals—epistocratic ones—are best left off the table in those further debates. Moreover, I have tried to show that attention to similar constitutional debates in the past can help us find resources to guide our current theoretical reflections.

¹⁶ Fabio Wolkenstein, "Intra-Party Democracy beyond Aggregation," *Party Politics* 24, no. 4 (2018): 323–34

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