

What's the Party Like: The Status of the Political Party in Anti-Defection Jurisdictions

Political parties are frequently described as organisations that mediate between citizens and civil society on the one hand, and institutions of the state on the other. They play a pivotal role in mobilising voters, engaging in the formation of public will, and connecting this will to empowered decision-making sites. Once the ‘orphans of political philosophy’¹, parties have received renewed attention over the last few years by scholars who emphasise the indispensable role of partisan political activity in the sustenance of a democratic society. Yet, the precise status of parties in a democratic constitution, and, therefore, the obligations they ought to bear, remains a matter of controversy.

This article explores the legal requirements that can be placed on political parties in jurisdictions with anti-defection laws, which constitutionalise parties’ control over the legislative process. In the first instance, I explore how we should conceptualise the status of parties in anti-defection jurisdictions. Ordinarily, the debate over parties’ status involves a binary response, deeming parties either as private, voluntary organisations or instead as quasi-public ones. I argue that, under anti-defection laws, parties acquire a different status altogether: they should be viewed as *legislative* entities. To be clear, the presence of anti-defection laws is not the only condition under which parties can acquire legislative status. There could be several other sources of strict party discipline that entail a similar scenario, such as a strong tradition of allegiance or threats of deselection by party elites.² This article focuses, however, on the implications of anti-defection laws, for such rules remain understudied in contemporary normative commentary on partisanship and the legislative process. Moreover, as I later demonstrate, anti-defection laws involve a particularly stark transfer of power away from parliament to the party. As such, they serve as a useful case study for illustrating the conceptual point that parties, under certain conditions, should be conceptualised as law-making bodies. Ultimately, opening up this conceptual possibility contributes to inviting broader discussion over further conditions under which the party’s status should be viewed in a similar fashion.

This then leads to the normative argument in this article which explores the requirements that can be justifiably placed on political parties in anti-defection jurisdictions once we recognise their legislative status. I argue that the exercise of legislative power in a democratic state is underpinned by procedural principles governing its exercise. When the power to enact laws is transferred from the legislative assembly to the political party, the latter’s compliance with such procedural principles acquires salience. In particular, I argue that one such requirement is the many-minds principle, according to which legislative decisions must be made by several persons rather than narrowly concentrated in the hands of a few. When parties serve as legislative actors, their internal decision-making power must be distributed across multiple persons. Consequently, in anti-defection jurisdictions, the law may justifiably regulate the decision-making forum of the extra-parliamentary party to ensure compliance with the many-minds principle.

It is also worth emphasising that, though limited in scope, the concerns raised by this article are sufficiently weighty to deserve attention. In the final section of this article, I explore

¹ Elmer Eric Schattschneider, *Party Government* (New York: Rinehart, 1942), 59

² For helpful overviews of the mechanisms of party discipline, see Sam Depaw, “Government Party Discipline in Parliamentary Democracies: The Cases of Belgium, France and the United Kingdom in the 1990s,” *The Journal of Legislative Studies* 9 no.4 (2003): 130-146; Christopher J. Kam, *Party Discipline and Parliamentary Politics* (Cambridge University Press, 2009).

the implications of our argument for two jurisdictions—India and Pakistan, which, together, comprise nearly a fifth of the world’s population. Therefore, though their democratic frameworks may be governed by institutional features that are relatively unusual, they nevertheless warrant scrutiny. Further, as I later suggest, several other countries attempt to constitutionalise party control over legislators, which means that the normative implications of anti-defection laws remain a theoretical question of interest beyond the jurisdictions explored in this article. Finally, the tension between the need for pluralism on the one hand, and the demands of authorisation and accountability³ on the other, is a common challenge for various democratic systems. This tension is particularly visible in debates over party discipline, where pluralism and dissent seem to conflict with the demands for party cohesion in the pursuit of authorisation and accountability.⁴ As I demonstrate, jurisdictions with anti-defection laws fall on one extreme of the spectrum, prioritising cohesion to the exclusion of the need for a multiplicity of voices in democratic decision-making process. It is worth attending, then, to anti-defection jurisdictions as limit case, as a way of exploring how the costs they impose with respect to pluralism could be mitigated. This may, in turn, contribute to resolving similar trade-offs in other jurisdictions where party systems lean heavily towards cohesion while neglecting the demands of pluralism.

The first section begins by exploring the status of political parties in anti-defection jurisdictions, demonstrating why they should be viewed as legislative entities. The second section then examines how conceptualising the party as a legislative entity can affect the law’s approach to the distribution of power within the extra-parliamentary party. It outlines the salience of the many-minds principle as a procedural norm governing the legislative process, and discusses its application to the extra-parliamentary party’s decision-making forum. The third section of the article examines the implications of this argument for two anti-defection jurisdictions, India and Pakistan.

(1) Beyond the Private/Quasi-Public Divide: The Party in Anti-Defection Jurisdictions

Anti-defection laws can be of at least two types. The first set (*party-hopping*) involves merely prohibition on the practice of legislators’ switching their party affiliations. Since such laws do not curtail legislators’ actions beyond this narrow limitation, I set these aside for the purposes of this article. The second set of anti-defection laws tether legislator to their parties in more restrictive ways, and come in two different forms. First, there are *anti cross-voting laws* that compel legislators to vote in a manner determined by their respective political party. Such laws exist in India and Pakistan. In both countries, legislators stand to lose their seats if they vote against, or abstain from voting with, their party’s whip.⁵ Second, there are *party expulsion laws* which prescribe that legislators disqualified by their party also lose their membership of the legislative assembly. Such laws exist in various countries including Guyana, Namibia, and Singapore. There is considerable variation across jurisdictions with party expulsion type laws

³ For an account of these two values and their role in normative models of democratic representation, see Dario Castiglione & Mark Warren, “Rethinking democratic representation: eight theoretical issues and a postscript,” in Lisa Disch, Mathijs van de Sande, and Nadia Urbinati, eds., *The Constructivist Turn in Political Representation* (Edinburgh: Edinburgh University Press, 2019), 26-27.

⁴ See Dominique Leydet, ‘Partisan Legislatures and Democratic Deliberation’, *Journal of Political Philosophy* 23, no. 3 (2014): 235–60; Jonathan White & Lea Ypi, *The Meaning of Partisanship* (Oxford: Oxford University Press, 2016), 209–228; Andrew Cuddy, ‘When Does Partisanship Become Excessive?’, *Representation* 54, no. 3 (2018): 261–77.

⁵ The 52nd amendment to the Indian constitution disqualifies a member of parliament “if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it”. The constitution of Pakistan has a similar provision (Article 63-A).

concerning conditions under which parties are permitted to expel their legislators.⁶ Much of my argument in this article could also apply to political parties which have greater latitude in expelling legislators. In particular, they would apply to parties that are allowed to expel their legislators from parliament for voting against their directives. However, I focus on anti cross-voting laws where there is greater consistency across jurisdictions on the relationship between the political party and its members in parliament. In this section, I wish to explore the status that the law should attribute to parties in democratic systems with such laws.

Let me turn, first, to responses ordinarily presented in debates over the status of a party in a democratic system. For the most part, common law has tended to treat political parties as nothing more than *private associations*, which fall outside the domain of public law.⁷ They have been viewed as ‘assemblages of persons gathered together to advance their political interests [...] governed by the law of contract’.⁸ On this account, parties are akin to a lawn tennis club between private individuals. Grounded in the freedom of association, political parties have wide latitude in regulating their internal affairs.⁹ This conceptualisation places sharp limits on the scope of permissible legal regulation into a party’s internal affairs. It allows the law to intervene only when officials of the party breach their own constitution or act in violation of the principles of natural justice. Further, such remedies are available only to members of a given party, and do not extend to other actors, like prospective members or non-member voters in a state.

More recently, both, public law and academic scholarship on the subject have begun to conceptualise political parties as *quasi-public bodies*.¹⁰ In common law, there are two routes to the exercise of public law over putatively private bodies. The first relates to the *source of the power* under which a body acts or acts within. Whereas parties were previously viewed purely as creatures of contracts, in many countries, they now find themselves embedded in networks of state regulation concerning their activities. For instance, many jurisdictions now require parties to register with a statutory body before they can field candidates under their name, or use their symbols on a ballot. Parties also enjoy legally recognised privileges such as access to state funding. This strengthens the case for bringing aspects of their activities within the scope of public law. Another important limb on which the parties’ quasi-public status rests lies in the *functions* which they perform. On this account, parties ought to be subject to administrative review by virtue of their performance of ‘public functions’:

Political parties are the conduit to Parliament; they are the means by which private individuals in their role as electors transfer their power via representatives to the State; and ‘they are the transmission belt for the development and carriage of policy into legislation and practice’... it is parties who decide who will become members of the legislature, arguably the most important, and indisputably public, body in the nation. It is parties which fill the

⁶ Csaba Nikolenyi, *Constitutional Sources of Party Cohesion: Anti-defection Laws around the World*, Presented at the Oslo-Rome Workshop on Democracy, November 7-9 2011, 12-13

⁷ For an overview of judicial precedent for this perspective, see Keith Ewing, *The Cost of Democracy* (Oxford: Hart Publishing, 2007), 63–86; Graeme Orr, “Private Association and Public Brand: The Dualistic Conception of Political Parties in the Common Law World”, *Critical Review of International Social and Political Philosophy* 17 no. 3 (2014): 338–40; Robert C. Wigton, *The Parties in Court: American Political Parties under the Constitution* (Lexington Books, 2013), 125.

⁸ Caroline Morris, *Parliamentary Elections, Representation and the Law* (Bloomsbury Publishing, 2012), 107.

⁹ See Evelyn Brody, “Entrance, Voice and Exit: The Constitutional Bounds of the Right of Association,” *U.C. Davis Law Review* 35, no.4 (2002): 862-65; Nancy Rosenblum, “Political Parties as Membership Groups,” *Columbia Law Review*, 100 no. 3 (2000): 813-44; Julia E. Guttman, “Primary Elections and the Collective Right of Freedom of Association,” *Yale Law Journal* 94, no.1 (1984), 117-137.

¹⁰ Morris, *Parliamentary Elections*, 117–20; Anika Gauja, *Political Parties and Elections: Legislating for Representative Democracy* (Surrey: Ashgate, 2010), 92–4; Ingrid van Biezen, “Political Parties as Public Utilities,” *Party Politics* 10, no. 6 (2004): 701–22; Leon D. Epstein, *Political Parties in the American Mold* (University of Wisconsin Press, 1986), 155–99.

legislature and form the government, either alone or by arrangement with other parties. The results of their candidate selection or deselection decisions have much wider ramifications than the immediate membership of the party.¹¹

From this perspective, parties are not so much like lawn tennis clubs, but like the Federal Reserve in the United States: they are private bodies with a mandate to perform certain public functions. The conception of parties as quasi-public expands the scope of their public regulation by allowing us to subject them to public law standards beyond those enumerated in their respective constitutions. It would allow, for instance, the application of more stringent legal regulations concerning non-discrimination to the party, and requirements of procedural fairness in its disciplinary procedures. Nevertheless, since parties are not agencies of the state, they would continue to enjoy considerable discretion in the regulation of their internal affairs.¹²

Both accounts of the party described above are grounded in certain empirical facts about parties' relationship with the law or the functions that they perform. This is significant insofar as our account of parties, and the normative expectations we hold them to, are contingent on such facts. On the second perspective outlined above, for instance, parties' quasi-public status derives from their increased reliance on the state for funding, and their pivotal role in linking citizens to representative institutions. I want to argue that the presence of an anti-defection law constitutes one consideration which can alter how we conceptualise the party. When members of parliament are beholden to their respective parties in the conduct of their legislative actions, we can no longer view parties as private, or even as quasi-public associations.

The exercise of control by the political party over its MP (Member of Parliament) is not unique to jurisdictions with anti-defection laws that restrict cross-voting. Even in the absence of such laws, party leaders can demand strict discipline, resulting in a situation where dissent by their MPs becomes negligible or altogether absent. Yet, there are two features which distinguish anti-defection laws from ordinary mechanisms for the party's control over the legislative process. This is not to suggest that the features I am about to highlight are necessary conditions for conceptualising the party as a legislative body. It is possible—even likely—that the relevant threshold of the party's control over law-making for this conceptual move is met even in the absence of such factors. Here, though, I outline ways in which parties in anti-defection jurisdictions come to acquire legislative status over and above those that operate in other democratic systems characterised by strict party control over its MPs. As such, they emphasise how anti-defection laws present a particularly stark example of the transfer of legislative power away from parliament to the party, even though such a shift may well take place in other ways.

First, I wish to call attention to the normative principle *expressed* by anti-defection laws. In jurisdictions with anti-defection laws, cross-voting is prescribed as a *penalty* for dissenting legislators. The constitutional system, and not just the party, expresses its support for the idea that parties, rather than legislators, ought to determine legislative action. MPs who depart from their legislators, then, are conceived as *rule-breakers*. This, in turn, can reinforce the diminished normative space for the MP to exercise independence with respect to the judgments of her party leaders. This point is consistent with Russell Muirhead's suggestion that in European parliamentary democracies with looser discipline, the weakening of party unity could be attributed to the rise of norms and expectations among voters that make it 'profoundly difficult to admire the legislator who takes his or her direction from the party leadership'.¹³ Now, of course, one might suggest that the anti-defection law is not the only way in which expectations of allegiance on behalf of an MP can be built, for parties can successfully establish such norms in other ways: by socialising their legislators to demonstrate loyalty to the

¹¹ Morris, *Parliamentary Elections*, 124.

¹² *Ibid.*, 126-128.

¹³ Russell Muirhead, *The Promise of Party in a Polarized Age* (Cambridge, MA: Harvard University Press, 2014), 178-79.

party leadership, for instance. While this is true, it is important to note that an anti-defection law contributes to reducing the costs of constructing an expectation of compliance by MPs. The constitutionalisation of party control renders deference by the MP as a default rule. Stipulating this expectation through the constitution likely reduces the need for a party to invest in the development and maintenance of such a norm. Moreover, it can also reduce the role of contingent intra-party dynamics in framing the expectation that legislators must toe the party line. For when an anti-defection law exists, party leaders need not enjoy hegemony within their party to enable them to frame deference from MPs as a norm. This is not to deny that a party leader's weak position in the party may enable the creation of a different expectation: one where legislators are able to exert their independence, and insist that they should be allowed to challenge the party's position from time to time. However, the point of a default rule is that it places the burden on challengers to bring about a countervailing normative space.

The point about an anti-defection law's expressive underpinnings is, of course, somewhat speculative: much will depend on the degree to which such laws can *successfully* construct or reinforce normative standards for legislators. Moreover, the *relative* efficacy of the anti-defection law's norm-setting capacity vis-à-vis other mechanisms for establishing similar expectations remains to be seen. These are fruitful lines of enquiry for empirical research that would significantly deepen our understanding of constitutionalised party control over law-making. With that in mind, let me now turn to a second feature of an anti-defection law, where we can be more confident in our analysis. Until now, I have emphasised the *source* of strict party discipline, suggesting that entrenchment of anti-defection laws in *national constitutions* is an important aspect of their transfer of legislative power to the party. Another feature of anti-defection laws I wish emphasise is the *nature of the penalty* they prescribe. The fact that legislators operating under such laws stand to lose their seat in the legislative assembly greatly reduces the influence they can exercise on their party before a vote is taken. This point is easy to overlook. As I acknowledged above, even countries without anti-defection laws often demonstrate considerable unity between legislators' votes and the line dictated by their party. Floor votes, though, are a poor indicator of the degree of influence that legislators exercise on policy. Much of the influence legislators exert takes place before a matter comes to the vote. Under some circumstances, they can force their governments to retreat, taking a bill off the agenda for fear of legislative defeat.¹⁴ Further, their 'anticipated reactions' can lead governments to amend bills behind-the-scenes in line with backbenchers' preferences.¹⁵

Anti-defection legislation can severely constrain the degree to which legislators can exercise such behind-the-scenes influence.¹⁶ This is not only because of the severity of the penalty (disqualification from Parliament); although that, too, is important; but further, in some cases, anti-defection laws enable governments to push through any legislation simply by issuing whips. When their majority in Parliament is large enough, governments could simply disqualify rebelling legislators from the assembly and ensure safe passage for their legislation. Similarly, an opposition party can disqualify legislators who vote with the government, and potentially block a particular law from attaining, say, a supermajority. In other words, disqualification from the legislature entails loss of one's legal ability to block the decision on which dissent has been expressed. On the other hand, countries without anti-defection laws give legislators at least the formal power to block a government's move. The application of sanctions might deter them from doing so, but legislators nevertheless remain legally able to block the decision against

¹⁴ Meg Russell and Philip Cowley, "The Policy Power of the Westminster Parliament: The 'Parliamentary State' and the Empirical Evidence," *Governance* 29, no. 1 (2016): 125-6.

¹⁵ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 107; Meg Russell and Daniel Gover, *Legislation at Westminster* (Oxford: Oxford University Press, 2017), 134-7; Peter Dorey, *Policy Making in Britain: An Introduction* (London: Sage, 2014), 141.

¹⁶ Udit Bhatia, "Cracking the Whip: The Deliberative Costs of Strict Party Discipline", *Critical Review of International Social and Political Philosophy*, OnlineFirst (doi: 10.1080/13698230.2018.1479813).

which they have dissented. This difference can be significant insofar as the ability to block party leaders' decisions alters the incentive structure available to such leaders for engaging with their backbenchers. In other words, by threatening legislators with disqualification from parliament, anti-defection laws significantly reduce the ability of legislators to exercise influence over legislation.

An appropriate reading of these implications suggests that anti-defection laws result in the transfer of legislative power from the legislator to the political party. The political party becomes *constitutionally* recognised as the *wielder of legislative prerogative*. It does not just serve as a conduit between voters and law-makers. Rather, it becomes, and is expected to serve as, the bearer of a portion of law-making power. This is not to deny that parties, tasked with the exercise of legislating, might be influenced by others, including parliamentarians from within their ranks. Even in jurisdictions without anti-defection laws, members of parliament routinely look outside for advice about whether they should endorse or resist a particular policy proposal. They consult trade unions, constituency associations, trusted confidantes and the like. In doing so, they may show considerable deference to such groups in planning how to respond to a given bill. Yet, it would be implausible to infer from this that the power of legislating has been transferred from the member of parliament to, say, a trade union. Similarly, when party heads acquire legislative power, they may consult members of their parliamentary party. However, the constitutional system gives those parliamentarians no greater authority relative to other groups that may influence the party heads. Conceptually speaking, then, influence should not be equated with the power to legislate. I revisit this point in the next section of this article.

Note that the transfer of power involved here is different from the exercise of delegating one's power. When legislators delegate their power, for instance, to bureaucrats, they ordinarily retain control over the exercise of that power. Such control can be exercised in two ways. Legislators may enact framework legislation that is intended to guide bureaucrats how to act and constrain the scope of their conduct. Moreover, legislators can, if they so wish, recall the entire mechanism of delegation, restoring power back to themselves. The anti-defection law permits neither of these actions. It does not allow legislators to constrain the scope of their parties' decision-making powers. Rather, parties acquire any legislative power conferred by the constitution on the Parliament. Moreover, legislators also lose the ability to restore power back to themselves since any attempt to amend the anti-defection law is also subject to the anti-defection law. As such, parties, rather than parliament, are empowered to decide whether or not they should retain the legislative power given to them by the anti-defection law.

What implications follow from this account of political parties as legislative entities? In the next section, I argue that the constitutionally acknowledged legislative status of parties requires their compliance with principles that govern law-making in a democratic state. Before proceeding, a methodological point is in order. I have indicated that our analysis of the status of parties would turn on certain empirical facts about their role. Against this, one might insist that this sort of fact-sensitivity is misguided. My analysis in this section only suggests that parties *are* the loci of legislative power under constitutions with cross-voting anti-defection laws. But this does not prove that parties *should* be afforded such a role. From a normative perspective, it is possible to insist that anti-defection laws ought to be discarded, rather than assumed as a starting point for speculation over how parties should be conceptualised. I am sympathetic to the idea that anti-defection laws are unjustifiable from a democratic perspective. However, the remainder of this article should be conceptualised as an exercise in non-ideal theory. Assuming the continuing operation of the anti-defection law is not just a matter of observing *stare decisis*. While part of my goal in this article is indeed to offer guidance to constitutional law scholars and decision-makers, it is also to clarify the normatively best way ahead. I wish to outline what obligations parties should bear *if* they possess the power and normative status given to them by

anti-defection laws. In both the jurisdictions I examine in this article, the courts have unequivocally ruled on the constitutional validity of their respective anti-defection laws.¹⁷ The status of parties in public law, however, remains contestable. As such, assuming that anti-defection laws are here to stay is as much a methodologically sound starting point for non-ideal political theory as an appropriate way of adjudicating an open question in constitutional law.

(2) Parties as Legislative Actors: The Question of Party Regulation

In the previous section, I argued that parties in jurisdictions with anti-defection laws should be treated neither as private entities nor as merely quasi-public organisations. Rather, they ought to be conceptualised as legislative actors. In this section, I examine how parties' constitutional status as legislative actors ought to affect how we approach questions pertaining to their regulation. The argument starts from a simple premise: even in jurisdictions where the act of law-making is entrusted to the party instead of legislatures, this role must be performed in a manner consistent with principles central to the legislative sphere. Law-making must be compatible with the substantive and procedural limits that govern legislating. The requirements that the law places on a legislative body are transferred to whatever body holds the power to legislate.

Here, we can distinguish between the *extra-parliamentary party* (EPP) on the one hand, and the *parliamentary party* or legislative caucus on the other. The party's legislative caucus comprises its members who hold a place in parliament. The EPP, on the other hand, refers to the wider party organisation, including its constituency branches, affiliate associations, and policy-making committees. One might target various aspect of the extra-parliamentary party's decision-making processes, and claim that these should be regulated by the law; for instance, how its leadership races are organised, or how it canvasses for new members. In the remainder of this article, though, my concern is with the distribution of decision-making power within that part of the EPP which has the power to instruct how the party's legislative wing should vote on given bills. Ordinarily, it is the legislative wing of the party that is subject to legal regulation through rules of procedure that govern the legislative process. When parties—rather than parliament—become the legislative site, however, it is not enough to rely on parliamentary rules to govern processes of decision-making within the legislature. If the law-making process is to be governed by procedural constraints, then such constraints should apply to those sites that serve as legislative institutions. Thus, when EPP comes to hold the power to legislate, its decision-making forum can reasonably be subject to the kind of constraints that ordinarily govern parliamentary processes. I argue that the law can justifiably demand that, within the forum of the extra-parliamentary party that has the authority to instruct the party's legislative wing, power must be distributed across multiple individuals. It is, of course, possible for the EPP to distribute such authority across multiple committees, each tasked with discrete policy areas. Such committees, taken together, may ensure the inclusion of multiple perspectives in the party's decision-making processes. However, I will focus on the exercise of legislative power by a single EPP forum, in the light of concerns about cohesion discussed later in this section.

2.1 The Many-Minds Principle and its Implications

The dispersal of political power across multiple actors constitutes a procedural limit on the act of legislating, regardless of the body in which this power is actually vested. In other words, laws must be made not only by a democratically authorised set of actors, but by *multiple* so-authorised actors. We can refer to this as the many-minds principle. The principle can be defended in at least two ways. First, the many-minds principle is underpinned by a concern for representativeness, which in turn is grounded in the value of democratic legitimacy. Laws are

¹⁷ *Kihoto Hollohan v Zachillhu*, 1992 SCR (1) 686 in the Supreme Court of India; *Wukala Mahaz Barai Tahafaz-e-Dastoor vs. Federation of Pakistan*, PLD 1998 SC 1263 in the Supreme Court of Pakistan.

binding on everyone in a given society. They have a coercive element insofar as they dictate how we should act, and empower the state to compel us to do so. We are bound by coercive laws even when we disagree with their content. In fact, much law-making is characterised by deep disagreement, where we disagree not merely about conflicting claims of justice, but also the very truth conditions of those claims. It is only through a process of public justification that the coercive power of law can be considered legitimate, based on collective authority, rather than brute force. As Jeremy Waldron argues, 'If a citizen who disagrees with the new law asks why she should obey it, we want to be able to say that her disagreements...were aired as fiercely and forcefully as possible at the time the law was considered and that it was enacted nevertheless in a fair process of deliberation and decision'.¹⁸ So, the concern for legitimacy of law leads to a premium on the representativeness of the legislative body.

The many-minds principle stems from the recognition that larger groups of decision-makers are more likely to satisfy demands of representativeness than smaller ones. Individuals are cognitively limited in the lines of argument they can pursue by themselves. This is particularly true of large, heterogeneous societies characterised by frequent deep disagreement on political issues. It seems implausible to expect any individual or small group of individuals to represent a multiplicity of potentially contradictory perspectives. Instead, alternative viewpoints from others can help direct decision-makers to reasons that their particular perspective might otherwise ignore. By expanding the pool of reasons, they can better satisfy the demands of public justification of law, and, therefore, those of democratic legitimacy.

Second, the large size of the assembly is seen as contributing to its epistemic strength. As Waldron emphasises, in our high-flown enthusiasm for deliberation focused on principles, it is easy to forget that legislatures must be adequately informed about diverse interests in society. No one individual or small group of individuals, no matter how competent, is likely to possess all the relevant information. As a result, the task of legislating ought to be given to a 'large assembly consisting of hundreds of individuals, ranked roughly as equals'.¹⁹ In her work on collective intelligence, Hélène Landemore makes a similar argument emphasising the wisdom of the many over the few.²⁰ Although above average competence might be helpful in some respects, the perspective of experts might be limited in others, resulting in common blind-spots. 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.

The insistence on the primacy of the legislature over the judicial branch in law-making can be seen as underpinned by the many-minds principle.²¹ Decision-making by the judiciary is said to be epistemically inferior in relation to legislatures since it emanates from a body comprised of a small group of individuals. This group is also less cognitively diverse since it is formed of a narrow professional class of legal experts. That said, legislative assemblies in actual democratic systems are a far-removed from the ideal envisioned by the many-minds principle. Due to the professionalisation of politics, politicians remain in office over a period of time, insulating them from a range of perspectives available within the general population. Further, the cost of the electoral process in most democracies means that they are likely to be economically advantaged. These empirical circumstances do not, however, militate against the many-minds principle. Rather, they only underscore that legislative assemblies must do much more to open their offices to hitherto marginalised groups and prevent the overinclusion of

¹⁸ Jeremy Waldron, *Political Political Theory* (Harvard University Press, 2016), 154.

¹⁹ Waldron, *Political Political Theory*, 116.

²⁰ Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (Princeton: Princeton University Press, 2013).

²¹ See, for instance, Adrian Vermeule, *Law and the Limits of Reason* (Oxford: Oxford University Press, 2008), 25-56.

already privileged ones. This would not only better satisfy procedural requirements of a democratic order but also help legislatures better realise their epistemic potential.

If, therefore, decision-making by the many is a central procedural requirement for law-making, whichever body is entrusted with legislative power must respect this principle. When the extra-parliamentary party become the locus of legislative power, its decision-making committee empowered to exercise it must comprise multiple actors rather than a few. The internal decision-making process of the EPP qua legislative actors can justifiably be regulated to ensure compliance with the many-minds principle in this respect. How widely such power ought to be dispersed is a difficult question. Is it sufficient that twenty actors hold decision-making power? Or should the number be higher? While these are indeed controversial questions²², I hope to show that party constitutions in India and Pakistan fail to satisfy the procedural requirement even minimally. This is because they grant a single figure, namely, the party president a disproportionate degree of political power. At the very least, then, this power must be further dispersed for parties to perform their legislative role consistent with the principle of decision-making by the many.

The many-minds principle is compatible with what we might call an autopilot mode of decision-making: where multiple actors hold the power to take decisions but normally trust, and defer to, decisions taken by a small group among them. As long as there remain institutionalised opportunities for critical contestation and the organisation's political culture permits their use, such deference can be seen as a form of division of labour rather than forfeiture of power. In such circumstances, the decision-making committee of the party can insist that a particular issue requires further scrutiny rather than the deference they ordinarily demonstrate.²³ This conceptualisation of the many-minds principle is also consistent with how partisanship tends to operate in legislative processes: co-partisan political elites are likely to support their party even in the absence of the possibility of effective sanctions for acting otherwise.²⁴ Thus, even if the EPP comprises many members, it would be unsurprising if actual decision-making is normally undertaken by a smaller number of actors. Nevertheless, the dispersal of legislative power would allow the wider committee to disrupt the routine decision-making process and call for further scrutiny of bills from time to time.

Yet, one might still worry that multiple points of power within the party could produce deadlocks within a party. This could matter, first, because a coherent message is crucial for parties to obtain *authorisation* from their voters. If parties are to serve as agents for democratic legitimisation through electoral authorisation, they cannot afford internal discord that undermines the ability of voters to authorise a particular platform through their vote for a given party. From this perspective, the value of partisanship lies in parties' capacity to present intelligible platforms, allowing the voter to easily indicate which platform she supports. Moreover, one might also defend the need for cohesion within the party by appealing to the value of *accountability*. For voters to hold parties accountable, it is important that every party sets out a clear message with respect to its programmatic commitments. By setting out distinct platforms they stand for, parties enable the voter to sanction or reward them for their conduct in office in ways that would be difficult to achieve were the same party to stand for multiple

²² The numerical size of a legislative entity has long remained a vexing question. In Federalist 55, James Madison, while addressing this issue, stated that "no political problem is less susceptible of a precise solution than that which relates to the number most convenient for a representative legislature". Something similar might be said of the numerical size of the party's decision-making site charged with legislative decisions.

²³ Mark E. Warren, 'Deliberative Democracy and Authority', *The American Political Science Review* 90, no. 1 (1996): 46-60; Alfred Moore, *Critical Elitism: Deliberation, Democracy, and the Problem of Expertise* (Cambridge: Cambridge University Press, 2017), 64-67.

²⁴ Philip Norton, "Cohesion without Discipline: Party Voting in the House of Lords," *The Journal of Legislative Studies* 9 no. 4 (2003): 57-72.

courses of action.²⁵ Further, an internally divided party makes it difficult for voters to attribute responsibility for undesirable outcomes, diluting the value of the party label in facilitating accountability.

We could respond to such concerns in at least two ways. First, we might emphasise ways in which the many-minds principle can stand to promote value like authorisation and accountability. Consider, for instance, the value of internal dissent by prominent co-partisans in facilitating accountability. Insofar as citizens are prone to dismissing legitimate criticism by their partisan adversaries, dissent from within one's own partisan camp can have value in holding a party accountable. Such dissenters can signal that, despite being co-partisans, they find their party's conduct or decisions on specific issues difficult to endorse. This, in turn, can focus the electorate's attention on the internal debate within the party, enabling them to render their judgment in a more informed manner. Similarly, dissent from co-partisans can have value in clarifying and revealing what has been democratically authorised. Here, it is important to note that party platforms are not always referendums on specific policy issues. Rather, on many issues, a party presents voters with broad programmatic commitments for their authorisation. How a subsequent mandate is to be interpreted frequently remains a matter for further debate. Consider, for instance, a commitment to a 'points-based immigration' system. Even once the party obtains a mandate for such a policy, further questions remain: should the law specify a salary threshold in this immigration system?; or should higher educational qualifications attract greater points? Co-partisans can have considerable value in interpreting the kind of decisions that have been authorised. As actors committed to the wider ideological framework of the party, they are particularly well-situated to reason why or not a specific policy would cohere with the party's commitments on that issue, as well as its commitments in other policy areas.

Second, we could acknowledge that the application of the many-minds principle may generate some trade-offs with respect to authorisation and accountability. But this fact highlights an important tension that arises from parties' dual role when, in addition to their electoral function, they also acquire legislative status. The process of law-making requires a plurality of voices and attention to complex dimensions of each issue. The demands of authorisation and accountability, on the other hand, seemingly pull in the direction of the need for cohesion and simplification, enabling the voter to register an informed vote. To deny any plurality within the party's decision-making body is to cede too much to the party's electoral role and altogether neglect its legislative status. Instead, a more plausible response would consist in attempting to mitigate some of the costs that the many-minds principle may pose to parties' ability to present voters with a more coherent platform. Thus, for instance, we might insist on an aggregative procedure to determine the party's final stance on legislative issues. Although multiple actors should be included in the extra-parliamentary forum that has legislative authority, all such individuals can justifiably be required to back the decisions that emerge after a fair decision-making process. Moreover, one could further stipulate that disagreements must be bracketed during a limited campaign period when the need for a coherent message for voters is most pressing. The aggregative procedure, of course, would need to be carefully designed to prevent a further kind of incoherence, commonly described as the 'discursive dilemma'. This takes place rational individual judgments are aggregated in ways that produce inconsistencies at a collective level: for instance, when a majority exists for the premises of a given position but not for the conclusion itself—or indeed vice versa. The decision-making procedure may, therefore, need to be designed to aggregate decisions only over the premises or exclusively over the conclusion. While there are certain trade-offs associated with each of these mechanisms,

²⁵ Elmer Eric Schattschneider, *Party Government* (New York: Rinehart, 1942). For a recent statement of such a position, see Frances Rosenbluth and Ian Shapiro, *Responsible Parties: Saving Democracy from Itself* (Yale University Press, 2018).

neither generally obstructs the decision-making group's ability to offer justifications for its decisions, or its capacity to operate in an epistemically reliable manner.²⁶

2.2 *The Many-Minds Principle: Already Satisfied?*

One might object that my argument is inadequately sensitive to how, despite lacking formal voting rights, legislators can nevertheless influence the legislative process in ways that satisfy the many-minds principle. There is indeed empirical evidence to show that formal voting rights give legislators influence, the critic might say, but none that proves that lack of such formal power deprives them of influence. As such, there are grounds for revisiting my claim that anti-defection laws transfer legislative power to the political party, and the subsequent implications that I draw from this suggestion. My response to this objection is partially empirical and part theoretical. First, let me emphasise that it is notoriously difficult to obtain insight into the actual operation of intra-party discussions in the jurisdictions this article is concerned with. Decades of scholarship on the subject has focused primarily on the role of political parties in electoral competition in India and Pakistan rather than their policy-building processes.²⁷ This neglect is not incidental. Social scientists have admitted that the opaqueness of parties and the high degree of secrecy with which they operate obfuscate not just the actual centres of power within but even the office-bearers within formal party structures.²⁸ That said, anecdotal evidence suggests that legislators find themselves severely constrained in exercising influence on legislative decisions advanced by their respective parties. For instance, Rochana Bajpai's research on parliamentarians in India found that backbench legislators from the ruling party, the Bharatiya Janata Party, rued the weak strength of opposition parties. Bajpai (personal communication, October 15 2017) states that 'Off the record, current and previous MPs from ruling coalitions say that they wish there was stronger Opposition to hold their own governments to account'. Unable to voice dissent against their own government, such backbenchers are left to rely on Opposition parties to raise their own concerns.

Having said that, there is reason to doubt that evidence demonstrating how legislators exercise some influence on parliamentary decisions would be sufficient to allay our primary concerns. Suppose new research emerged which highlighted how legislators, despite lacking formal voting rights, play a role in influencing their party leaders' decisions through informal channels. One might insist that such influence would suffice to satisfy the requirements of the many-minds principle. This response, however, would fail to track the relationship between a formal right to vote and the vote-bearer's place in the deliberative process. To see this clearly, imagine a country where some group of persons decided to disenfranchise another group. Let us suppose this group insisted that, despite withholding the vote from the other group, it would listen carefully to views expressed by its members. Further suppose that this policy was enacted, and the enfranchised group pointed out how it had, in fact, come good on its promise. In doing so, it shows us various decisions on which it deferred to the disenfranchised group or

²⁶ See Christian List, "The Discursive Dilemma and Public Reason," *Ethics* 116, no. 2 (2006): 362-402; Landemore, *Democratic Reason*, 185-92.

²⁷ See, for instance, Mohammad Waseem, *Democratization in Pakistan: A Study of the 2002 Elections*, Oxford: Oxford University Press, 2012; Kanchan Chandra, *Why Ethnic Parties Succeed: Patronage and Ethnic Head Counts in India* (Cambridge: Cambridge University Press, 2004); Myron Weiner, *Party Politics in India: The Development of a Multi-Party System* (Princeton: Princeton University Press, 1957). Part of this neglect also stems, perhaps, from the predominant view that parties in countries like India are 'non-ideological' in nature, oriented largely towards clientelist politics based on ascriptive identities. This view has been forcefully challenged in recent work. Pradeep K. Chhibber and Rahul Verma, *Ideology and Identity: The Changing Party Systems of India* (Oxford: Oxford University Press, 2018).

²⁸ See, for instance, Kanchan Chandra and Wamiq Umaira, India's Democratic Dynasties, *Seminar* 622 (June 2011).

was at least influenced by it. Would this suffice to undermine the value of formal voting rights for the disenfranchised group?

I doubt this would be the case. That is because we would rightly worry that the disenfranchised group exercised influence only *at the pleasure* of the group that held voting rights. Indeed, there might be some cases that are not significant enough for the enfranchised group to fight for; it might choose to simply defer to those without voting rights. In others, the interests of the enfranchised group might be adversely affected by the preferences of the disenfranchised group but it might nevertheless choose to defer to serve its long-term preference that the present political arrangement persists. Moreover, the current representatives of the enfranchised group might show considerable good-will and seek to take on board the views of the disenfranchised whether or not they view this as being in their interests. We may nevertheless worry that those without voting rights can exercise influence only when deemed acceptable by the enfranchised class, when the latter judges it consistent with its own interests to permit such influence. Further, we may rightly worry that the largess of the enfranchised class is *contingent*. Future representatives of that group may not demonstrate similar good-will. The equality of formal voting rights, therefore, serves as an institutional guarantee of equitable influence that is not contingent on the interests or good-will of one relevant actor. Of course, institutional guarantees can only go so far. They may ultimately fail to provide political actors with adequate leverage to override strong-minded groups or leaders, strongly committed to pursuing their own interests at the cost of others. Yet, they represent an attempt to ensure that the decisions made within an institution are not exclusively based on the pre-institutional interests or dispositional characteristics of its participants.²⁹

2.3 Inclusive Intra-Party Deliberation in Recent Scholarship

I now turn to a final objection one might offer against my argument. On this account, the demands of the many-minds can be satisfied in other—potentially better—ways than merely dispersing power across multiple actors in the EPP’s decision-making committee. Instead, one might insist that the party’s decision-making processes should be more thoroughly participatory, and comprise deliberative forums where the wider party membership has a greater say. In recent scholarship, several scholars have defended such calls for greater inclusiveness in parties’ decision-making processes, and wider participation of their membership bases.³⁰ Such scholars have emphasised the need for parties to conduct their internal decision-making processes in a more deliberative manner with the involvement of ordinary members. This move has been defended as a way for parties to strengthen their linkage with citizens, and, in turn, enable citizens to exercise deliberative agency in the democratic process.

While I am sympathetic to the above argument, an assessment of the proper role for the wider membership in intra-party decision-making is beyond the scope of this article. My focus here lies on the implications that follow from the transfer of legislative power from *parliament to the party*. Now one might argue that even in jurisdictions without anti-defection laws, legislatures exercise far too much power over democratic decision-making. On this account, rather than concentrating power in the hands of MPs, we should devolve it to a wider group of citizens through the intra-party system. Advancing this case, though, requires a

²⁹ Again, an analogy with disenfranchisement serves to underscore this point. A minority group might, despite holding the franchise, be outvoted by the majority group. To deny it the vote, though, is to fail to try and leverage its capacity for influence by means like building coalitions.

³⁰ Fabio Wolkenstein, “Intra-Party Democracy beyond Aggregation,” *Party Politics* 24, no. 4 (2018): 323–34; Carlo Invernizzi-Accetti and Fabio Wolkenstein, “The Crisis of Party Democracy, Cognitive Mobilization, and the Case for Making Parties More Deliberative,” *American Political Science Review* 111, no. 1 (2017): 97–109; Enrico Biale and Valeria Ottonelli, “Intra-Party Deliberation and Reflexive Control within a Deliberative System,” *Political Theory* (forthcoming).

reassessment of the role of legislatures in decision-making as such. That is, it requires us to consider whether even a numerically large assembly of parliamentarians can satisfy the procedural demands facing a democratic system. Instead, I am concerned with the demands that can be placed on the EPP specifically by virtue of its acquisition of powers that normally rest with the legislature. That said, there are good grounds for ensuring that power is distributed across multiple actors in that body of the EPP which instructs the party's legislative wing *even if* a political party began to involve its wider membership in its decision-making processes. It is true that concerns about a plurality of voices might be partly mitigated through the greater participation of ordinary members. However, while such a move might *reduce* the extent to which power needs to be distributed in the EPP's central committee, it would not warrant abandoning our concern for pluralism at the final stage of the party's decision-making process. This is because even in parties characterised by considerable membership-wide deliberation, those who bear ultimate authority to enact decisions are likely to hold significant discretion. Recommendations may be pooled from across different party fora, but nevertheless require aggregating into a coherent whole, or precise specification into legislative documents. Moreover, in the dynamic context of parliamentary politics, legislative proposals may need to be revisited, amended or even undergo compromises, before they are eventually converted into law. Therefore, the final decision-making committee of the EPP is likely to enjoy an important say over the law-making process. To enable a single individual or small group of individuals to exercise such power may undermine the benefits accrued through the establishment of inclusive intra-party deliberation.³¹

There is another way in which my emphasis on the dispersal of legislative power is narrower than that found in recent normative scholarship on intra-party reform. It focuses on the distribution of *voting* rights rather than *deliberative* power within the extra-parliamentary party's decision-making forum. That is not because deliberation is unnecessary to satisfy the many-minds principle. Instead, it is because in the absence of the vote, deliberation capable of satisfying this requirement is unlikely. As I previously argued, in the absence of formal voting rights, discursive engagement becomes a matter contingent on the good-will or pre-institutional interests of empowered actors. By contrast, the ability to bring one's vote to bear upon outcomes gives others an incentive to give greater considerations to one's views. It is possible, of course, that this influence might take place 'behind the scenes'. This may allay the epistemic concerns underlying the many-minds principle. It may also satisfy the concerns for representativeness underlying the call for greater inclusion. However, one might take a more demanding view of what democratic legitimacy demands. So, one might worry that though the policy-making process would be more representative than before, it would not be *seen* as adequately representative. On this account, the legitimacy of binding laws does not depend merely on its being a function of various views being represented in a deliberative process. Rather, those bound by such laws should be able to see that their views were properly aired when laws were enacted. From this perspective, the dispersal of decision-making power across multiple actors in the EPP's decision-making site would need to be supplemented by greater transparency with respect to deliberations conducted there. This may take the form, for instance, of requiring 'parties to stream the official meetings of their central committees'.³² Therefore, whereas the dispersal of voting power would satisfy the necessary requirements of

³¹ Something similar could be said of the possibility, highlighted previously, wherein the decision to instruct the party's legislative wing might be vested in multiple committees, each tasked with specific clusters of policy issues. This might reduce the demands for inclusion we place on a central committee, but given the inevitable discretion such a committee would enjoy, especially in ensuring a coherent set of policies, a multiplicity of perspectives would remain important there.

³² Biale and Ottonelli, *Intra-Party Deliberation*, 27. The authors remind us that practices like this are in use by some left-wing European parties like the Democratic Party in Italy.

minimalist versions of the many-minds principle, greater reform of the intra-party deliberative process may be warranted under more demanding interpretations of that principle.

(3) The Salience of the Party Head in India and Pakistan

In the final part of this article, I apply the argument developed above to party systems in India and Pakistan. Since anti-defection laws in these countries transfer power from parliament to the EPP, it is worth examining their party constitutions to understand who bears the legislative power vested in the party. I argue that parties in both jurisdictions cede wide formal authority to their party presidents, rendering their role in the legislative sphere significant. In doing so, I examine constitutions of their major national parties: the Bharatiya Janata Party (BJP) and the Indian National Congress (INC) in India, and the Pakistan Muslim League (Nawaz) (PML-N) and the Pakistan Tehreek-e-Insaaf (PTI) in Pakistan.

The constitution of the PML-N as well as the PTI contain no provisions concerning how the relationship between the EPP and the parliamentary party would be regulated. The anti-defection law, article 63A of the constitution of Pakistan, on the other hand, outlines the legal authority of the ‘party head’ over the parliamentary party. Under this law, the party head is the arbiter of whether or not a legislator should lose her seat for having voting against her party on legislative proposals. It has been interpreted by the courts as mandating that the party president ‘enjoys a central, pivotal and decisive role and position within the party, in the electoral process and in the Parliament through the Parliamentary Party, *which he directly controls and superintends*’.³³ Ultimately, therefore, the judiciary has interpreted the anti-defection law as giving the party head decisive authority over the actions of the parliamentary party by way of adjudicating when a particular legislator deserves to be expelled for having violated her party’s instructions on legislative matters.

The power of party heads in India is less explicit but nevertheless similar to their counterparts’ in Pakistan. In, both, the Indian National Congress and the Bharatiya Janata Party, the power of regulating the actions of the parties’ legislative wings lies with each parties’ Parliamentary Boards.³⁴ The Parliamentary Boards, in turn, are elected by intermediary bodies, the Congress Working Committee in the INC and the National Executive in the BJP.³⁵ Party presidents in both cases enjoy considerable power in the election of these intermediary bodies. In the INC, the party president is entitled to appoint eleven out of twenty-four members of the Working Committee.³⁶ The BJP gives the party header even greater power, and is allowed to unilaterally appoint the National Executive.³⁷

What implications do these constitutional provisions have for the relationship between the parties’ presidents and parliamentary wings in both parties? I wish to argue that, in the case of the BJP, and to a lesser extent in the INC, the party constitutions transfer control over the party’s policy-making activities to the organisation’s heads. Although this power is mediated through their respective Parliamentary Boards, the Presidents’ control over the body which elects this Board—the Working Committee in the Congress and the National Executive in the BJP—gives them significant influence over the Boards’ processes. To see why, it is helpful to reflect on some lessons from rational choice theory concerning principals and agents.

In appointing agents to carry out their wishes, principals face two primary obstacles: *adverse selection* and *moral hazard*. Adverse selection occurs when there is an information

³³ *Zulfiqar Ahmed Bhutta v Federation of Pakistan* in the Supreme Court of Pakistan, Constitution Petitions No.37 to 45, 47 to 51 & 54 of 2017 and Civil Miscellaneous Appeal No.244 of 2017, 37.

³⁴ Article 25A of the Constitution of the Indian National Congress; Article 25 of the Constitution of the Bharatiya Janata Party

³⁵ *Ibid.*

³⁶ Article 19 of the Constitution of the Indian National Congress

³⁷ Article 20 of the Constitution of the Bharatiya Janata Party

asymmetry such that the principal is unable to acquire relevant information about the agent, indicating how she would act in the future. Moral hazard arises when an agent undertakes actions of which the principal disapproves. In order to prevent agency loss, principals can use *ex-ante* mechanisms like screening to prevent adverse selection, and *ex-post* mechanisms such as incentives or rewards to restrict moral hazard. A closer look at the organisational structure of both Indian parties reveals the capacity of their respective presidents to restrict agency loss, thereby ensuring that their organisation's Parliamentary Board acts in ways that they prefer.

Office-bearers in the BJP's National Executive and INC's Working Committee are composed of experienced party members, who have demonstrated their loyalty to presidents over several years in key organisational roles. Party presidents have a free reign in appointing the body which chooses the parliamentary board. Indeed, this holds true more for the BJP where the President has the exclusive authority to appoint the National Executive relative to the Congress, where the Party President can nominate only a near-majority of the Working Committee. Nevertheless, such powers allow Party Presidents to stack the intermediary bodies with members who have a proven track record of compliance. As a result, they are able to screen effectively to avoid adverse selection. Further, party presidents also possess strong *ex-post* mechanisms to curtail moral hazard. The strongest of these is the ability to deselect members of the intermediary bodies. Members who fail to comply, or demonstrate a propensity to not comply, can be dropped from the BJP National Executive or the Congress Working Committee the next time these bodies are due for election. Presence in such bodies can be valuable for party members. It carries the promise of political visibility, prominence within the party, and ability to cultivate relationships of patronage, loss of which Congress Working Committee members can be reasonably expected to resist. Further, in the INC, the Party President is permitted to unilaterally place the Working Committee under suspension.³⁸ Once the Working Committee is not in session, he acquires all of this body's powers.³⁹ Here, it is worth noting that the Parliamentary Board, the ultimate policy-making body, does not have a specified numerical size. As such, if the President's nominated Working Committee members depart from his preferences in the selection of members to the Parliamentary Board, the President possesses a way of overriding their judgment. He can simply suspend the Working Committee, thereby assuming its powers, and subsequently appoint new members to the Parliamentary Board.

Ultimately, the challenge posed by the internal organisation of parties in India closely tracks that facing the problem of candidate selection in jurisdictions without such laws. In the latter, centralised control over party lists or candidate selection threatens to transfer power over the parliamentary party to a narrow group of party elites. There, too, party elites can draw on, both, *ex ante* and *ex post* mechanisms to ensure that legislators comply with their preferences. The control of party heads over parliamentary policy in India, though, is still more worrying in at least two ways. First, it concentrates a significant degree of power in one individual—the party head—rather than a group of party elites. In doing so, it presents a particularly troubling violation of the many-minds principle. Second, party heads in India can influence the intermediary through which their preferred decision-makers would be elected. The Party President of the BJP, for instance, can choose the members of the National Executive, through which he would pursue the election of his preferred members of the Parliamentary Board. Party elites elsewhere, however, must travel through the general vote of the wider voting population, even if they desire the election of certain individuals to legislative office. The lack of choice over the intermediary body can constrain the degree to which they are free to secure the election of their preferred legislators. In India, however, no such constraint exists. Rather,

³⁸ Article 19, Disciplinary Rules, Constitution of the Indian National Congress

³⁹ Article 18(i), Constitution of the Indian National Congress

party heads can unilaterally appoint or significantly influence appointments to the intermediary body which elects the Parliamentary Board, the key site for legislative decisions.

To conclude, in both India and Pakistan, party presidents enjoy extremely strong control over their organisation's policy-making processes. I have argued that in jurisdictions with anti-defection laws, the party serves as the proper site of legislation. Thus, decision-making power must be distributed across multiple actors within the EPP. It appears that party constitutions in India and Pakistan present a particularly stark violation of this requirement.

(4) Conclusion

It is not a coincidence that legislative assemblies around the world tend to comprise scores of members rather than a handful. The many-minds principle favours a numerically large law-making assembly, capable of satisfying representational and epistemic demands that legislating involves. At the same time, the ideal of democratic authorisation of representatives and need to hold them accountable places some limits on the number of persons who can participate in the legislative process. This is partly why legislative assemblies are not normally made up of tens of thousands of members. The design of the legislature, then, offers us some clue about the kind of values that a democratic system tries to balance. I have argued that, when it is the extra-parliamentary party that acquires legislative status, it must similarly balance the need for pluralism and the demands of cohesion. In particular, that forum of the party which acquires the power to instruct its parliamentary wing, must be structured such that it distributes power across multiple actors, in compliance with the many-minds principle.

The argument outlined here invites us to consider further conditions under which the party may acquire legislative status, triggering the application of the many-minds principle to its decision-making forum. As I have indicated, anti-defection laws offer a particularly strong example where parties, rather than legislators, come to hold legislative power. In other jurisdictions, however, closer attention to party-parliament dynamics may be necessary to establish the locus of legislative power. Further, in the case of India and Pakistan, decision-making authority within the party is especially concentrated in the hands of the party head. However, the many-minds principle could be violated even in the absence of monopolistic control by a single figure over the extra-parliamentary party's decision-making process. Thus, in systems where parties can be said to enjoy law-making power, further work could shed light on whether such power is adequately distributed in ways demanded by the many-minds principle.