Precautions in a Democratic Experiment: The Nexus between Political Power and Competence

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The Indian Constituent Assembly, which undertook the task of framing a constitution for independent India, voted to establish universal adult suffrage for the new republic. This decision was historic, reversing decades of qualified suffrage under the colonial government. It was particularly significant because such transfers of power do not always end in the decentralization of political power. Indeed, many post-colonial governments, including neighbouring Pakistan, declined to conduct elections soon after independence. Moreover, this also marked the first transition to adult suffrage through a Constituent Assembly mandated to establish the constitutional framework for a polity. Everywhere else before this, the move towards adult suffrage had come about only through gradual political developments and legislative change. Where revolution had resulted in the establishment of new constitutions, for instance, in the United States and France, these had continued to fall short of enfranchising everyone.

As I will highlight shortly, the dominant narrative remains that this historic transition marked a clear break from the colonial past. This meant that the Constituent Assembly abandoned the rhetoric favoured by colonial officials that the Indian people were in the 'waiting room of history', gradually transitioning towards the full realization of democratic freedoms. Instead, it affirmed its faith in the political capacities of Indians, voting to immediately operationalize democratic institutions. I will argue that this view hides the variety of ways in which anxieties about citizens' inability for self-government continued to play a role in the Assembly's deliberations.

The argument I advance in this article is particularly relevant in the light of recent events in Indian politics. In 2015, the Indian states of Rajasthan and Haryana enacted laws that required candidates for election to local councils in villages to have completed high school education. Critics of these laws argued that they were unfair since a large proportion of potential candidates did not have access to education. In particular, they were criticized for their disparate impact on disadvantaged sections of the population—such as women and members of backward castes. When the case found its way to the Supreme Court, the judges argued that the laws were justified since education was essential to sensible political judgment[2]. This Constitutional moment in India comes at a time when 'epistocracy'—rule by experts—has begun to find contenders in normative political theory[3]. My paper contributes to this debate by suggesting that this argument is not novel to the Indian Constitutional scene. Nor is it a resurrection of a colonial tradition that attempted to posit education as a prerequisite for wielding political power. Rather, I highlight that one finds various forms of this argument at

[1] I am grateful to editors of this volume, Rochana Bajpai, and Humeira Iqtidar for their valuable comments.

[2] *Rajbala v. State of Haryana* (2016) 1 SCC 463

[3] Brennan, Jason. (2016). *Against Democracy*. Princeton: Princeton University Press; Somin, Ilya. (2013). *Democracy and Political Ignorance: Why Smaller Government is Smarter*. Stanford: Stanford University Press.

the very inauguration of India's Constitution.

(I) Background to the Assembly's Proceedings

In September 1945, the newly elected Labour Government in Britain, headed by Clement Atlee, announced its intention to hold elections to India's provincial legislatures which would act as electoral bodies for a Constituent Assembly. Such a Constituent Assembly would be responsible for 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, on the other hand, 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 overthrow of the imperial British government[4].

The Cabinet mission arrived at a compromise plan, announced in May 1946, according to which the Indian provinces were to be geographically grouped into those which were predominantly Hindu; those which were predominantly Muslim; and finally, others where the population of Hindus and Muslims were equal[5]. The plan recommended that representatives from these provinces meet in three separate groups to frame the Constitutions for their respective provinces. These groups would later meet together to settle the Union Constitution. Both the Congress and the Muslim League accepted this plan even as they held strong reservations[6].

By August that year, elections to the Constituent Assembly took place under the terms of the Cabinet Mission's plan. The members of this Assembly were elected by the Provincial legislatures, with the provinces represented in the Assembly at a ratio of approximately one to one million of their population. The Provincial legislatures were elected by qualified franchise[7] and communal electorates. These legislators, belonging to three communal categories—Muslims, Sikhs and General (Hindus and all other communities)—would elect members of the Constituent Assembly separately, according to their percentage in the province's population and their proportion of the provincial delegation. The Princely States were to elect 93

[4] Austin, Granville. (1999). *The Indian Constitution: Cornerstone of a Nation.* New Delhi: Oxford University Press, p.5

[5] The first group included Madras, Bombay, Central Provinces, United Provinces, Bihar, and Orissa. The second group was made up of Punjab, Northwest Frontier Province, and Sindh. The final group included Bengal and Assam.

[6] ibid., 6

[7] Only about a quarter of the population was entitled to a vote, which depended on the ownership of property. Though the Congress was keen on a universal franchise, it accepted the principle of a qualified vote for the moment since preparations for general elections would have delayed the creation of the Assembly

representatives in the Assembly, selected through consultation between the Assembly and the rulers of the States.

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[8]. 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 India Independent Act passed by the British Parliament came into force on August 15, 1947, and the Constituent Assembly set out to draft the Indian Constitution.

(II) Adult Suffrage in the Assembly: Three Accounts

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 an qualifications on sex, property or education. Austin (1966: 37) 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". 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". Similarly, Ingrid Creppel 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"[9]. Three lines of arguments can be found explaining how this position came about.

The first line of argument emphasizes 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'[10]. The rhetoric of democratization that spurred 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 of overcoming a traditional, hierarchical order with a modern and egalitarian one. It involved constituting citizens as bearers of liberal rights that they were previously denied, both, by 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

[8] Ibid., 10

[9] Creppell, Ingrid. (1989). 'Democracy and Literacy: The Role of Culture in Political Life'. *European Journal of Sociology*, 30(1), p. 40

[10] Bayly, Christopher. (2012). *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire.* Cambridge: Cambridge University Press, p. 308-9. As Dipesh Chakrabarty argues, this argument was meant to oppose the colonial government's insistence on relegating Indians to the "waiting room of history", denying to a majority of them the right to vote.

people[11]. 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 elements of the old order were retained, a discursive shift accompanied its justification. Previously, for instance, intervention by the state in regulation of speech was justified by reference to incapacities of the natives. Unlike British subjects, Indians could not be act as proper autonomous, self-governing agents. This justified a range of restrictive legislations, such as the law on sedition. Now, the same legal code was justified by the constituent assembly by appealing to the identity of those who would operate it: Indians, rather than alien officials. Thus, even illiberal governmental mechanisms now eschewed the notion that its subjects were 'unfit' for enjoying certain kinds of freedoms[12].

A second argument emphasizes *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 such a move. This could help institutionalize the de facto authority that the Congress held among the masses. 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 [...]?[13]

The hegemonic status of the Congress at the time of independence also provided 'insurance' against possible side effects of granting the franchise[14]. 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 Graneville Austin as a

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

[12] Bhatia, Gautam. (In Press). 'The Conservative Constitution: Freedom of Speech and the Constituent Assembly Debates'. In Bhatia, Udit (ed.). *Deliberations on Democracy: The Indian Constituent Assembly Debates.* New Delhi: Routledge.

[13]Cited in Banerji, A. C. (ed). (1965). *Indian Constitutional Documents 1757-1947*, Volume IV: 1935-1947. Calcutta: A Mukherjee & Co.

[14] Jaffrelot, Christophe. (1998). *La Democratie en Inde: Religion, Caste et Politique*. Paris: Fayard.

'one party body' in a 'one party country'. "The Assembly was the Congress and the Congress was India".

A third argument emphasizes *cultural* reasons for eschewing qualifications like those based on education in the award of the franchise. Ingrid Creppel 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 prerequisite for a vote, it must be internally valued by members of a particular polity as something indeed worth having. But in India, literacy was not widespread enough to be valued as a cultural norm. Barely ten percent 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"[15]. This explanation finds resonance in a telling statement by a member of the constituent assembly, who argued that a literacy qualification would have been desirable for the franchise, but since too many people would be excluded by it, such a move would render democracy in India entirely meaningless.

Despite the force of these suggestions in explaining the adoption of adult suffrage, I argue that they tend to make invisible ways in which this move was still seen as suspect in the Indian Constituent Assembly. In the following sections, I demonstrate how debates over the exercise of the franchise and bicameralism in the Assembly were influenced in significant ways by concerns about citizens' political incompetence.

(III) Fit for the Franchise?

On 4th January, 1949, Thakurdas Bhargava, a member from East Punjab, argued that the constitutional provision requiring adult suffrage be amended to disqualify illiterate members from the vote[16]. Without such qualifications, elections in India would be a 'farce'. Other members also explicitly voiced their criticism of adult suffrage during the assembly's proceedings. Hriday Nath Kunzru, for instance, suggested that the franchise ought to have been postponed for a period of fifteen years, restricting it to less than fifty percent of the population for the time being. He suggested that the ignorance of the electorate meant that a gradual expansion of the franchise was needed in order to prevent demagoguery. Kunzru's argument found the support of Frank Anthony, 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"[17].

Indeed, none of these members formally pressed an amendment against the universalization of the franchise**.** But it is worth looking beyond explicit criticism of adult suffrage per se. Some

[15] Creppell, Ingrid. (1989). 'Democracy and Literacy: The Role of Culture in Political Life'. *European Journal of Sociology*, 30(1), p. 42.
[16] CAD 7.2: 1245 Bhargava proposed that such disqualification ought to be implemented for the first ten years. Interestingly, a draft provision entitling every citizen to free primary education within a period of ten years from the operation of the Constitution had earlier been rejected by the Advisory Committee of the Constituent Assembly. 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 satisfy.
[17] CAD 11: 939

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? Prabhu Dayal Himatsinghka's 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)[18]. Similarly, Ayangar argued that adult suffrage had been adopted "in keeping with the times", but left to himself, he would have sought alternatives until adult education became available to all persons[19].

There were undertones that questioned the wisdom of the franchise in India. One finds several references to adult suffrage in the context of the franchise as a 'risk', or an 'experiment'. This vocabulary was adopted even by some who otherwise endorsed the principle of adult suffrage.

> 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'[20].

The notion of an experiment implies a departure from tried and tested ways. It was also a political system for people who had only been subject to rule by monarchs and colonial rule. It was a break from its own past into an uncertain future. But 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 industrialized societies had adopted a very different political trajectory.

In what follows, I attempt to trace various ways in which such undertones, voicing anxiety's about peoples' incapacities for self-rule, were present in the Indian Constituent Assembly. These include, firstly, suspicion of capacity for self-government within 'tribals'; secondly, the call for institutional devices to protect against the 'risks' of adult suffrage; and finally, the appeal to persons' lack of education in the design of the electoral procedure.

(a) Adivasis as a Suspect Group

Adivasis were singled out by the Constituent Assembly's members in criticism against the wisdom of the franchise for illiterate populations. Brajeshwar Prasad, for instance, urged that

[18] ibid., 669
[19] ibid., 663. Lok Nath Mishra, 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] ibid., 624 (Statement by RK Sidhva)

elections were particularly unsuitable for adivasis since they exposed them to exploitation: "The tribal people being ignorant, being backward, being down-trodden, will be exploited by powerful groups during the times of election. I hold that the principle of election is not at all suitable to these people"[21]. Similar concerns were raised by Biswanath Das, who classed women, scheduled castes and hill tribes as incapable of exercising their vote properly:

> As regards literacy among the hill tribes whom you have enfranchised in full and given the right to vote, it is practically next to nothing. What a tremendous risk you have taken? You are calling upon them to vote, but who are they? A very highly inflammable class of people who have up to date absolutely no experience either of propaganda or of voting in elections[22].

The skepticism over the political capacities of adivasis had a wider history, evident in the way they were approached by the Constitutional framework under the colonial state. The creation of distinctive tribal spaces preceded the enumeration of specific groups as tribes on the basis of any well-defined criterion. The Act went on to demarcate areas as "Backward tracts" and "Really Backward Tracts". These were later framed as "excluded" and "partially excluded" areas according to their levels of backwardness in the 1935 Act, based on a recommendation of the Simon Commission. The general principle in these areas was the inapplicability of general laws, leaving discretion for the Governor General to determine policy either directly or through his agents. The Legislative Council was prohibited from asking any questions about the administration of the excluded areas. This framework was projected as having established British authority as a paternalistic guardian of adivasi interests against exploitation by non-tribals. It was also defended as necessary for the colonial government to undertake a program of reform in order to exert a civilizing influence on adivasis. But one of the assumptions behind the creation of such spaces was also that tribes could not cope with the complexity of representative institutions. The Montague-Chelmsford Report, on which the Government of India Act 1919 was based, had suggested that "there was no political material on which to found political institutions" in areas dominated by adivasis. The Constituent Assembly's Sub-Committee, formed for reporting on the condition of adivasis, presented the findings of D.Symington, who had been appointed by the Government of Bombay for a similar purpose in 1937:

> They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witchdoctors than in pharmacopoeia. They live near the border-line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local boards elections or local board administration[23].

The Sub-committee reports that Symington had, while giving evidence before it, "reiterated the view that elections would be completely useless so far as these people were concerned".

[21] CAD 9.1: 664.
[22] CAD 7.2: 1255
[23] CAD 7.1: 147 (Appendix D: Interim Report of the Excluded and Partially Excluded Areas [Other than Assam] Sub-Committee of the Advisory Committee).

'Criminal tribes' were a particularly suspect category, marked out by colonial officials for special attention with respect to policing and surveillance. The 1871 Criminal Tribes Act gave wide powers to the police in monitoring and arresting anyone born into one of the tribes, numbering around 150, which were listed under the legislation. These tribes were seen as "addicted to the systematic commission of non-bailable offences", and unaccepting of any moral code other than those belonging to their tribe. It was only in 1952, after the inauguration of the new Constitution in independent India, that this legislation was revoked.

Even Ambedkar, whose strong views on the need for adult suffrage emanated from his lived experience of structural injustice towards untouchables, was not immune against skepticism of adivasis' political capacities, particularly those of the 'criminal tribes'. In his evidence before the Simon Commission, he equivocated on the question of whether they ought to be enfranchised. Ambedkar began by discussing both, hill tribes and criminal tribes in the same breath, suggesting that he did "not think it would be possible to allow them the privilege of adult suffrage"[24]. Later in his testimony, he reiterated his commitment to adult suffrage, inviting a direct question on whether he was willing to "extend adult suffrage to the aboriginal tribes and to the criminal and hill tribes"[25]. At this point, Ambedkar responded in the affirmative[26]. But almost immediately, he drew a distinction between his stance on 'criminal tribes' and 'aborigines'. The former, he argued, ought to be excluded from the franchise "because by occupation they are a people who have more the interest of their own particular community in their mind, and they are not very particular as regards the means whereby they earn their living"[27]. As for the latter, he did not see any 'harm' in granting them the franchise. However, it is worth noting that this endorsement about the *permissibility* of enfranchising the hill tribes marked a sharp departure from his categorical affirmation of the suffrage for untouchables. This is notwithstanding the fact that he ended his testimony on this particular issue by reiterating that literacy and intelligence were not necessarily related.

How is it that members of the Constituent Assembly were able to specifically pick out adivasis as a suspicious category when it came to the franchise? After all, adviasis were not the only groups that were marked out as 'backward', and in need of particular engagement to ensure their social and educational reform. Lower-caste Hindus and religious minorities were also part of this category that concerned members of the Constituent Assembly. However, as Pooja Parmar points out, in the case of tribes, "backwardness" exhausted the definition of tribes and their identity. Muslims or Dalits would not cease to be so if their 'level' was raised; but a member of a tribe would remain a tribal only insofar as she was 'primitive'[28].

[24] "Statement "D": Evidence of Dr. Ambedkar before the Indian Statutory Commission on 23rd October 1928". In *lndian Statutory Commission,* Vol. XVI. Selections from Memoranda and Oral Evidence, Part I. London: His Majesty's Stationery Office. p. 52-75. Response to Question 20.
[25] ibid., Question 110.
[26] Ibid., Response to Questions 110 and 111.
[27] Ibid., Response to Question 112.
[28] Parmar, Pooja. (2012). Undoing Historical Wrongs: Law and Indigeneity in India. *Osgoode Hall Law Journal*, 49(3), p. 512.

Such arguments also came to the fore over debates on the sixth schedule of the Constitution. This provision gave autonomy to regional and district councils in areas dominated by adivasis. At least three kinds of arguments offered against this Constitutional provision referred to the purported incapacities of adivasis. Firstly, some argued that the sixth schedule gave too much political power to 'primitive' persons, who had neither literacy nor any prior experience of democratic processes[29]. Instead of awarding them greater latitude to protect their distinctive interests, power ought to be centralized with Governors, "to make the rules so that it may be easy for simple people there to follow what has been laid down"[30]. This argument appealed to the exceptional 'backwardness' of adivasis, urging that it far exceeded the ability of such persons to correct the situation for themselves. Thus, a centralization of power in favour of the executive was necessary in order to 'uplift' adivasis by improving their socio-economic status[31].

A second argument urged that adivasis ought to be governed not by politicans and legislators. Rather, their 'development' required governance by 'experts': anthropologists, doctors, and scientists[32]. On this account, the answer to the exceptional situation of adivasis, its delicate and complex nature, required not the centralization of political power, but a delegation of such power to experts who could study, assess and offer prescriptions for their problems.

A third argument urged that the fifth schedule was flawed since it gave power to 'primitive' persons over an 'advanced community' which followed a 'civilized' mode of life[33]. One might worry that awarding certain rights to a particular minority community concentrated in a territory may lead to the domination of non-members of that group who share that territory. Consider, for instance, concerns attached to permitting French-speaking Quebecers to introduce policies like mandatory French lessons in schools. One might worry that this treads upon the rights of English-speaking Quebecers. However, the argument made in relation to the adivasis did not refer to the *non-membership* of persons affected by district councils. Rather, it urged that the problem was that non-adivasis would lack political control in shared territories despite their advanced or *civilized nature* relative to the inferiority of tribes.

(b) Illiteracy and the Electoral System

Some members of the Constituent Assembly argued that the Indian Constitution ought to adopt a system of proportional representation for elections. Rochana Bajpai's work highlights three distinctive arguments that defended this proposal as more consistent with a *democratic* polity. Firstly, it was argued that the first-past-the-post system effectively disenfranchised voters who

[29] A similar argument was also made against granting greater administrative powers to Tribe Advisory Councils under the fifth schedule. These were councils comprised predominantly of scheduled tribe representatives from the state's legislature in certain 'scheduled areas'. Proposals aimed at enhancing the scope of their powers were rejected on various grounds, one of which was that tribal representatives were unlikely to understand the 'complex' process of lawmaking—even though these were elected members of the state's legislative assembly!
[30] CAD 11: 569 (Statement by Kuladhar Chaliha).
[31] Also see CAD 4: 1002-3, (Statement by Biswanath Das on Aborigines of Nicobar Islands)
[32] CAD 9.1: 282 (Statement by Brajeshwar Prasad)
[33] CAD 9.2: 1064 (Statement by Kuladhar Chaliha)

did not vote for the winning candidate. Proportional representation, on this account, was more democratic since it gave each person an equal chance of winning. It was, therefore, more consistent with political equality, where this was understood as enabling the realization of every individual to be represented by a person of her choice. Secondly, proportional representation was also favoured by some as a way of making legislative assemblies more representative of the diversity of political opinions in society. In particular, it would allow minority political opinion to be represented in legislatures. Proportional representation, then, was more democratic since it allowed the legislative assembly to mirror political opinions in proportion to their strength in society. Thirdly, Bajpai argues that proportional representation was also endorsed as a mechanism for preventing the concentration of power in any single party. As a result, it was more democratic since it provided a shield against majoritarian tendencies of the first-past-the-post system[34].

However, the Constituent Assembly rejected the demand for proportional representation. On one line of argument, this was dismissed as a divisive move, aimed at strategically bringing in religious minorities through the back door. It was also seen as potentially obstructing the formation of a strong and stable government. Ambedkar, for instance, argued against proportional representation on the grounds that "whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely it must maintain a stable government and maintain law and order". Significantly, the appeal to the system's complexity coupled with concerns about illiterate persons' inability to understand it, played an important role in the assembly's dismissal of proportional representation. It was argued that illiterate persons would fail to even mark their ballots correctly were this method adopted:

> Now, I do not think it is possible to accept this amendment, because, so far as I am able to judge the merits of the system of proportional Representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numericals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. *That in itself, would, I think, exclude the system of proportional representation* (emphasis mine)[35].

Further, proportional representation by single transferrable vote was too complex, it was argued, since it involved difficult calculations, and marking multiple preferences in the same election: "To work this system properly, the electorate must be well educated, because the voters has to give his preferences and illiterate person will not be able to understand the

[34] Bajpai points to Mahboob Ali Baig Sahib Bahadur's statement here: "Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature..." CAD 7: 1244-1245

[35] CAD 7.2: 1261 (Statement by BR Ambedkar)

significance of the various preferences"[36]. The fact that even legislators had found it difficult to understand the system was cited as evidence that this was beyond the abilities of uneducated persons[37]. Where the system had worked, for instance, in Switzerland, Belgium or Ireland, its success was attributed to its small size and educated electorate[38]. Such was the purchase of this argument that even proponents of proportional representation had to acknowledge its force. [39]

The argument that the size and illiteracy of the electorate rendered the democratic process unworkable or meaningless had been made before. Such arguments played a pivotal role in the colonial government's justification of deferring democracy in India. These arguments were criticized then in at least three ways. Firstly, critics in India suggested that the purported inability of uneducated persons to understand the electoral process were highly overstated. Persons were able to comprehend the significance of the act of voting despite their lack of education. In particular, participation in successive elections would further help them overcome any potential problems. Secondly, it was argued that any potential difficulties were also surmountable through innovation with the ballot itself[40]. This was achieved in the first instance by placing separate ballot boxes with pictures of every candidate in the election. Voters could register their preference by dropping the ballot paper in the box marked for their preferred candidate. Later, party symbols on the ballot were used as a way of allowing voters to register their preferences. This allowed persons to participate in the elections regardless of their ability to read or write. A third argument insisted purported administrative difficulty in administering elections was an inadmissible argument in debates over democracy. Such difficulties, even if they existed, would not serve to justify any deferral of democracy[41]. Thus, the dismissal of similar arguments earlier ought to be borne in mind when one reads the assembly's appeal to the incapacities of uneducated persons to work a purportedly complex system like proportional representation.

(c) The Scope of Adult Suffrage

Despite misgivings from certain quarters, the Constituent Assembly did proceed to institutionalize adult suffrage. The first elections under universal adult franchise took place in India only in 1952, once the Constitution framed by its Constituent Assembly had come into operation. The Assembly itself was constituted through indirect elections by the provincial legislatures. Further, provincial legislatures had been elected on the basis of qualified suffrage which had been put into force by the Government of India Act 1935. The irony of a body

[36] CAD 8: 320 (Statement by Shibban Lal Saksena)
[37] M. Ananthasayanam Ayyangar, 4th January, 1949
[38] CAD 8: 320 (Statement by Shibban Lal Saksena)
[39] DH Chandrasekharaiya, a proponent of proportional representation argued that: "The only objection to it may perhaps be that it is a little complicated system". Nevertheless, he went on to argue that "we are now trying big experiments in democracy, I think that no difficulty should be considered as too great for us to, solve. In our country 90 per cent of the population is illiterate, nevertheless elections are being held and political institutions are being run without any serious difficulties. Similarly, I feel that the system of propotional representation can get on every well notwithstanding the illiteracy of the masses" (CAD 5: 299-300).
[40] *Indian Round Table Conference*, November 12, 1930-Jan. 19, 1931, Sub-committee Reports, etc., vol.xii. London: His Majesty's Stationery Office, 1931, p. 223 (Statement by PC Joshi).
[41] Ibid. 232 (Statement by BR Ambedkar)

chosen under such limitations framing democratic institutions for independent India was not lost on members of the Assembly. Some members even proposed postponing the Assembly's proceedings until such time as direct elections had been held. But a decision was made to vest constituent power in the Assembly since hosting fresh elections would involve postponing the transfer of power. At its very inception, therefore, a compromise was made in postponing adult suffrage in India.

The scope of citizens' involvement was limited to adult suffrage exercised in two elections—for selecting representatives to the state legislative assembly and the first chamber of Parliament. The lack of consideration given to greater political involvement of citizens is significant. Consider two methods in which such involvement might have been institutionalized: right to recall and referendum measures. Each of these was proposed during the course of the Assembly's deliberations.

The right to recall representatives was proposed thrice on the floor of the Assembly. Lok Nath Mishra argued that such a right was necessary in order to constrain the degree of control that the political party, especially its high command, exercised over elected representatives[42]. Earlier, his colleague, Lakshminarayan Sahu had offered a similar proposal, reminding the Assembly that such a right had existed in institutions of local government in Bihar and Orissa[43]. In response—and the only response any proposal on the right to recall received—Patel had argued that "a healthy sense of responsibility and sense of honour" ought to be developed among representatives such that they would voluntarily step down if they lost the confidence of their constituents[44]. Two premises in Patel's response are particularly doubtful: firstly, that a representative could be expected to "keep his finger on the pulse of the constituency" and understand whether he was still backed by his voters; secondly, that "except stray instances or black sheep", legislators could also be expected to step down once they realized that they longer enjoyed popular support.

The right of recall is a contested device in normative debates over representative institutions. One can continue to debate whether it is a legitimate way of ensuring correspondence between constituents' preferences and the decisions of elected representatives. Much of this debate would turn on the conception of representation one advances; if the legislator is viewed as a 'delegate', then there seems to be a stronger case for the right to recall as opposed to if s/he is seen as a 'trustee'. Further, any inquiry into recall mechanisms would also turn on how we view the relationship of an elected member of a *national* assembly to her *territorial* constituency. Although it remains far from clear that the right to recall is an obvious normative step towards better representative institutions, the sheer absence of engagement with this measure in the Constituent Assembly's deliberations is significant.

[42] CAD 7.1: 648. Note that Mishra's proposal was recall was embedded in a system of indirect elections. As a result, the right to recall representatives would belong to "primary electors", who were drawn from the Panchayat in each village.
[43] CAD 4: 676
[44] ibid., 686

I turn now to proposals in the Constituent Assembly to incorporate *referendums*. Before examining these proposals, it is worth highlighting the different types of referendums that are possible. Firstly, they can be either *mandatory* or *voluntary*. In the voluntary type, legislative assemblies have the option of calling upon voters to express their preferences through a referendum, but are not required to do so. On the other hand, mandatory referendums take place when the Constitution provides that certain decisions must involve a referendum either in addition to, or in place of, the legislative body. For instance, a referendum might be mandated in the case of an initiative, whereby a legislative proposal that enjoys the support of a certain number of voters is subject to either a confirmatory or legislative referendum (see below). Secondly, referendums can be *binding* or *non-binding* upon the legislative assembly. Legislative assemblies have the option of not acting upon a non-binding referendum, treating them merely as inputs into their own final decisions, whereas the verdict of a binding referendum cannot be thus set aside. Thirdly, referendums can be either *confirmatory* or *legislative.* A confirmatory referendum is one where electors are directly called upon to ratify or reject legislation enacted by the legislative body. Here, the role of the referendum is limited to assenting or rejecting the bill rather than amending it. Further, the role of the electorate in relation to the legislative assemblies is non-reversible. The former cannot initiate legislation, but can only affirm (or deny) it. Legislative referendums give electors the power to vote on legislation. A matter might be brought to a referendum—ordinarily through recall measures—without its having been enacted by the legislative body. It is also possible that the legislative body may voluntarily ask for a measure to be decided through a referendum without having taken a decision on that measure itself. Fourthly, referendums can be held on either *ordinary* legislative matters or *Constitutional* ones.

Consider KT Shah's proposal for incorporation of referendums in the Indian Constitution[45]. He urged that the Constitution ought to provide for voluntary referendums. His proposal would have had the effect of allowing the executive to call for any referendum: binding or non-binding, confirmatory or legislative, on ordinary as well as Constitutional issues. Here, one might object that Constitutions do not need to allow a voluntary referendum. After all, even in the absence of such a provision, it is always open to parliament to opt for a referendum on any measure that falls within its jurisdiction. What, then, would have been added by Shah's proposed amendment? But a closer look shows that Shah's proposal was not entirely vacuous. It sought to give the power to hold a voluntary referendum to the *executive* rather than the legislature. Thus, the executive could without consulting the legislature, have asked for a referendum to confirm or deny parliament's decisions, or even transferred decision-making from parliament to a referendum altogether. Indeed, the close relationship between the executive and the legislature in a parliamentary system implies that the government is unlikely to transfer a matter to a referendum if such a move antagonizes the majority in the first chamber. However, transferring the power for a voluntary referendum to the government, nevertheless, would allow it to circumvent having to obtain approval for such a measure from the second—and in India's case, indirectly elected—chamber. A second proposal on referendums by Brajeshwar Prasad urged the Assembly to mandate a confirmatory and binding

[45] CAD 7.1: 980

referendum for amendments to the Constitution[46]. Under his proposal, any Constitutional amendment that secured the requisite majority in both houses of Parliament would have to gain the subsequent approval of a majority of the electorate through a referendum. This sought to substitute the proposal, eventually adopted, to give confirmatory power to state legislatures.

Both proposals for referendums, then, subordinated the potential exercise of direct democracy to representative institutions. Shah's proposal, in being voluntary, left the decision to move a referendum on the government—which further derived its existence from the majority in the first legislative chamber. Prasad's proposal, by limiting itself to a confirmatory role, sought to allow referendums only on decisions enacted by both legislative chambers. I do not highlight this in order to criticize their proposals; after all, it remains far from clear that direct democracy is an advancement over representative institutions[47]. My point is merely to emphasise that as far as referendums go, Shah and Prasad were not particularly ambitious in devolving power directly to the people.

Yet, their proposals received almost no attention from colleagues in the Constituent Assembly. Not only did the Constitution not provide for any form of referendum, but even proposed amendments to that effect received no engagement whatsoever. Some indication about how some members felt can be found in Shah's comments just days ahead of the adoption of the Constitution[48]. Criticizing the Indian Constitution's reliance on representative institutions to the complete exclusion of any form of direct democracy, Shah complained:

> Several suggestions had been brought forward at the proper movement regarding, for instance, the right to consult the people by means of a Referendum. or the power of the people to initiate radical legislation to make the Constitution really democratic. But they have been all negatived. The excuse has been given that we are not yet ready for such methods of working democracy in all its fullness. We would need, we were told, greater experience, better education, and more wide-spread consciousness of political power in the masses as well as its responsibilities, to be able to work with success such radical forms ,of democratic government. I am afraid, Sir, I cannot quite accept and endorse such a, view of our people's capacity, or of a working democracy in this country…Had we agreed to such arguments in the past, had we accepted the suggestion of the British that the people of India were not educated enough and aware enough of their rights and obligations to be able to work a democratic Government of their own, we should never even now have obtained our independence, and the right to self-government which is now our proud possession[49].

Before proceeding, it is worth noting that the conception of competence that underpinned anxieties about citizens is hard to capture. Some deliberations show that *formal education* was viewed as an ingredient of proper political judgment. Some emphasized a more minimal understanding, insisting on the need for *literacy* for citizens to vote intelligently. This was

[46] CAD 9: 1646-7

[47] Urbinati, Nadia. (2006). *Representative Democracy: Principles and Genealogy.* Chicago: University of Chicago Press.

[48] As a secondary report on his colleagues' (non)response, this statement ought to be read with some scepticism. It is entirely possible that Shah was attributing certain grounds for the exclusion of his proposal, whereas these were not offered to him. It is also quite possible that his colleagues did not really articulate any reasons for ignoring proposals for referendums. In the absence of any further engagement on this from the Assembly, Shah's own views on such treatment are, nevertheless, important.

[49] CAD 11: 619

viewed as a precondition for the successfully completing the process of voting—by marking one's vote properly. But it was also conceived as necessary for the proper exercise of the vote in a substantive sense. On the other hand, in their comments on adivasis, some viewed lack of *prior engagement with modern democratic politics* as grounds for restricting the degree of political power awarded to them.

(IV) The Bicameral Legislature

The Constituent Assembly voted to institute a bicameral legislature at the Centre. The first chamber would consist of members directly elected on the basis of universal adult suffrage, while the second chamber would derive its members on the basis of indirect elections through the legislative assemblies of various states. At the provincial level, it provided for the bicameralism in some states, while leaving the legislative assembly in other states with the choice to create a second chamber.

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[50] against bicameralism. Several members criticised the proposal for a second chamber on the ground that it would "clog in the wheel of progress", delaying legislative action and preventing speedy transformative decisions[51]. Mohd. Tahir argued that it was paradoxical for a body like the Constituent Assembly to insist upon a bicameral legislature. If faith could only be reposed in decisions that had been approved by two separate legislative chambers, then what authority did a unicameral legislature have in insisting upon the creation of a second legislative house? Others also expressed anxiety about the representation of vested interests through the second chamber[52]. In particular, they urged that the second chamber would give disproportionate representation to the interests of the landed classes and block attempts at redistribution of wealth.

There are various arguments one might offer for the desirability of a second chamber in the democratic process. Firstly, a second legislative chamber can allow for the representation of groups that are absent from or disadvantaged by arrangements in the first legislative chamber. This argument applies particularly in the case of minority groups disadvantaged by electoral procedures that prioritise rule by majority in the first chamber. This function is best served when the second chamber adopts a different electoral procedure than that present in the first: for instance, when members are chosen through proportional representation rather than first-past-the-post or even indirect rather than direct elections. A second way of defending bicameralism is by emphasising its role in supporting a federal arrangement. This argument is closely related to the previous one since it highlights the role of the upper chamber in ensuring better representation of the people. However, rather than better representing groups of persons,

[50] See statements by HV Kamath (CAD 9.1: 16) and Damodar Swarup Seth (CAD 7.1: 988) respectively.
[51] CAD 4: 926-7 (Shibban Lal Saksena). Also see statements by Kuladhar Chaliha (CAD 7.2: 1310) KT Shah (ibid.,1305-6); NG Ranga (CAD 9.1: 53-4). Renuka Ray (CAD 9.1: 56) also argued that the second chamber was redundant since the President at the Centre and Governors in the States could act as a check on hasty legislation
[52] HV Kamath (CAD 4: 679); Saranghar Das (CAD 4: 682)

the upper house is expected to represent provincial units. Thirdly, one might defend a second chamber for its ability to revise or re-examine decisions adopted by the first chamber. On this argument, the need for a third chamber stems from the fallibility of all political decisions. This particular strand of argument can pull in three further directions, calling for a second chamber comprised of: (1) A Different Set of Individuals (2) Different Institutional Features or (3) Different Kind of Individuals

(1) Different Set of Individuals: Bicameral legislatures can be used to multiply opportunities for rectifying errors, and delaying the legislative process in the hope that temporary surges of passion could be overcome. The idea is not that that second set of individuals who occupy another chamber is epistemically superior. As another representative assembly, constituted of persons also subject to epistemic deficiencies, it, too, can commit mistakes. However, the idea here is that having two chambers affords *two opportunities* for detecting such error. Moreover, by requiring both houses to pass the same bill, it injects a degree of *delay* into the legislative process. The idea is that the introduction of this delay can lead to deeper examination. In particular, this delay 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 was narrated in the Indian Constituent Assembly by L Krishnaswami Bharathi:

> It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farr and 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[53].

Of course, it is quite possible that both houses, comprised as they are, of fallible beings, may commit the same error despite two opportunities for reflecting upon it. It is also possible that the delay introduced by the second chamber does not lead to further reflection leading to detection of the error. Here, a comparison with the multiple locks on doors is helpful. It is not absurd to put two or more locks of the same kind on one's door while leaving the house. The idea here is not that the second lock is a better lock, but that it is better to have two (or more) locks than one. A determined or skilled robber may nevertheless manage to break in, but one hopes that the second lock makes the process harder, and delays it, giving more time for someone to notice and possibly intervene.

A crucial feature of argument (1) in favour of second chambers is its reversibility: the presence of the lower chamber can be defended with the same arguments in relation to the upper chamber. It is not just that the Senate is a body for revising and reconsidering decisions made

[53] CAD 7.2: 1308 (Statement by L. Krishnaswami Bharathi).

by the House of Representatives. The House of Representatives, too, can be seen as a chamber that is able to provide a second opinion and delay in decisions adopted by the Senate.

(2) Different Institutional Features: Recognition of our epistemic deficiencies might lead in a second direction—one that calls for a chamber with institutional features designed to overcome, or mitigate, such deficiencies. The arguments made for a second chamber in the Federalist Papers exemplify this strand of argument. The longer terms of the senate allowed its members to accumulate expertise better than representatives in the lower house, who were engaged in lawmaking only for short periods of time. As a result, the senate's longer terms for its members helped improve the quality of legislation. Further, longer terms meant that members of the senate did not need to give in to short-term demands of their constituents. Instead, unlike representatives in the House of Representatives, they had more time to convince their constituents about the need for laws that required the sacrifice of present interests for a greater good in the long run. Finally, the smaller size of the senate also enhanced the quality of its legislation since passionate surges were more likely in large assemblies like the House of Representatives.

In argument (1), what necessitated the presence of a second chamber was merely the need for an additional body comprising of different sets of persons to those who exercised power, and the presence of delays in the passage of legislation. In argument (2), the second legislative chamber was justified, again, not by a deficiency in the people who elected members to the first chamber, but institutional features of the House of Representatives: the shorter terms of its members, and the larger size of the assembly. The two arguments are related insofar as institutional features can exacerbate or fail to address epistemic deficiencies that arise from our shared epistemic limitations. For instance, we may worry about the inability of an institution to provide ample time for pooling expertise because we recognize that persons generally require time to acquire new knowledge. Or we may worry that larger assemblies are likely to give impetus to passionate surges to which all persons are vulnerable.

(3) Different Kind of Individuals: Contrast these with a third justification one might offer for revising decisions through a second chamber—an argument offered by members of the Indian Constituent Assembly for bicameralism. This justification focused on the *specific deficiencies of the electorate*, and, therefore, of the people that it would elect. The word 'specific' here is intended to signify that epistemic limitations are not equally distributed. Rather, the assumption is that there are persons who are less susceptible to epistemic error; therefore, the second house ought to ensure the presence of these more competent agents in the legislative process. In this argument, unlike (1) discussed above, the second chamber *is* more epistemically privileged. But, on the other hand, unlike (2), this epistemic privilege is not a function of its institutional features, but of the prior competence of persons who constitute the second house.

One member urged that a second chamber was necessary to check the 'vagaries' of adult suffrage, which would 'release forces of violence and of disorder' on an unprecedented scale. This was because of the illiteracy of the masses with whom power had been vested for elections

to the lower house[54]. Thus, appeal to risks of adult suffrage per se, rather than the institutional features of the legislative assembly that it produced, became one of the justifications for bicameralism in the constituent assembly debates. These risks, however, were not those that stemmed from shared epistemic features of all persons, but the particular deficiencies attached to illiteracy of the general population.

In what follows, I argue that the third justification for bicameralism—skepticism about the electorate's competence—helps account for two features of the institutional design of legislatures by the Constituent Assembly: nominations and indirect elections through graduate constituencies. Since the adult franchise was seen as bringing into play epistemic limitations of the wider population, nominations and indirect elections were ways in which competent persons could be awarded political power. Both features share the premises that: (i) the electoral process is insufficient in bringing into the legislature adequately competent persons[55]; (ii) and that it is permissible to bypass the normal electoral process to vest competent persons with legislative power equal to those elected by the people.

(a) Nominations in the Second Chamber

Presidential nominations for the Rajya Sabha found their place into the eventual design of the Rajya Sabha. The assembly agreed upon a provision allowing the president to nominate up to 12 members: "persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service". The initial proposal for nominations in the Constituent Assembly provided for the election of twenty-five members in the upper house through five panels for the representation of functional interests. These panels would have consisted of persons with knowledge or practical experience in (a) National language and culture, literature, art, education and such professional interests as might be defined by an Act of the Federal Parliament; (b) Agriculture and allied interests; (c) Labour; (d) Industry and commerce including banking, finance accountancy, engineering and architecture; and (e) Public administration. These panels mirrored those found in the upper house for the Irish Legislature.

The final provision, however, represented a contraction in the leeway afforded to such

[54] 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). Also see his statement at (ibid., 20). Another member, PS Deshmukh also attributed the preference for second chambers among his colleagues to "distrust of adult franchise" (ibid, 49).

[55] Jeremy Bentham, for instance, distinguished three dimensions of competence: virtue, ability, and energy. John Stuart Mill, on the other hand, separated 'talking' from 'doing', or deliberative competence from technical competence. See Elster, Jon. (2013). *Securities Against Misrule.* Cambridge: Cambridge University Press, p. 141-2; Urbinati, Nadia. (2002). *Mill on Democracy: From the Athenian Polis to Representative Government*. Chicago: University of Chicago Press, p. 60-64. As with the competence of citizens, the precise conception of competence expected of legislators was left unspecified by members of the Assembly. Competence in relation to legislators can be conceptualised in various ways.

nominations. The proposal for nomination through panels was removed from later drafts of the Constitution after BN Rau was advised that the Irish system, where a similar mechanism had been adopted, had posed problems[56]. In addition to the elimination of panels in favour of twelve nominees, there was another sense which the final Constitutional provision represented a contraction in competence-based nominations. Initially, the president was required 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.

Despite these contractions, it is significant that the Constituent Assembly did not eliminate nominated members in the upper chamber of the legislature. Here, one might object that this does not per se count as a measure designed to overcome inadequacies of the electorate. Nominations are an attempt to rectify perceived shortcomings in the outcome of the ordinary electoral procedure. These shortcomings might be of two kinds: those in the *representativeness of the assembly*, or its *technical competence*. The former shortcoming refers to one where certain sections of the population such as ethnic minorities fail to find adequate representation in the legislative body due to their numerical disadvantage. On the other hand, the legislative assembly might need nominations to enhance its technical competence rather than representativeness. One might argue that the provision on nominations represented an attempt at overcoming potential deficiencies in the representative character of the assembly, rather than an enhancement of its technical competence. On this reading, nominations from experts in literature and science were necessary because members from these fields ought to have presence in the assembly in order to represent the specific interests of those domains. Nominees' expertise in the defined fields did not give them any privileged claim to wider competence for the purposes of legislation.

Upon close examination of the way this provision was eventually phrased, and its passage through the Constituent Assembly, one finds grounds that support the suggestion that nominations were intended to enhance the legislature's competence rather than its representative nature. Firstly, the choice of fields chosen as relevant for overriding the electoral process is crucial. The constitutional provision on nominations suggests that knowledge of "literature, art, science and social service" and not, for instance, mining, carpentry or shoemaking triggers claims for representation. In other words, only particular kinds of knowledge are picked out as relevant in defining what must be represented[57].

Secondly, 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

[56] CAD 9.2: 30-1 (Statement by TT Krishnamachari)

[57] Here, one might be tempted to suggest that experts bring to the legislative domain the kind of technical competence that is necessary for the proper representation of interests. In other words, non-experts can help with knowledge-aggregation, or indicating 'where the shoe pinches', whereas experts are best equipped to craft policies. This ignores, however, the epistemic weaknesses and limitation of perspectives that accompany their expertise. See Landemore, Hélène. (2013). *Democratic Reason: Politics, Collective Intelligence and Rule of the Many.* Princeton and Oxford: Princeton University Press, p. 89-117.

literature, art, science and social service, however, members could be appointed without requiring that they undergo any process of elections at all. 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 prioritize prominence or excellence over representativeness in those fields as a prerequisite for serving as a legislator. In similar vein, notice another crucial change in how Article 80(3) was worded compared to the initial proposal. Nominated members were now required to possess '*special* knowledge' rather than mere 'knowledge' in their specific field[58].

The idea behind nominations, as one member put it, was to provide safe passage for experts who would feel "shy" in contesting elections[59]. Naziruddin Ahmad 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[60].

Even if there were a case for greater role for epistemically superior agents in the legislative process, it remains far from clear if appointed experts with a vote across issues would constitute the best mechanism towards that end. 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 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 queen'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.

An earlier provision in Constituent Assembly had proposed permitting the executive to nominate three members whose role would be restricted in both, scope as well as weight. Such

[58] Although 'practical experience' was listed as an alternative, it is significant that specialized knowledge of disciplines was seen as a relevant and satisfactory prerequisite for representation in the legislature.
[59] CAD 7.2: 1220 (Statement by Rohini Kumar Chaudhari). Also see CAD 9.1: 487 (Statement by PS Deshmukh).
[60] *ibid.*, 1213

members would "assist and advise the Houses in a particular measure that may be before the House". 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". 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"[61]. Yet, the final provision adopted by the Assembly expanded the power available to nominated members in both respects.

(b) University Constituencies

There was yet another—and more significant—way, though, in which bearers of knowledge were afforded a special place in democratic politics by the Constituent Assembly. This was through upper chambers in certain legislatures of the states, also known as State Legislative Councils. Article 171 of the Constitution provided for one-twelfth of the seats in these Councils to be filled by persons who were graduates, and an identical proportion by those who were engaged in teaching in educational institutions above the secondary level.

The idea of including University seats in provincial councils was first set into motion in 1887 by Dufferin, who recommended the incorporation of representation of organized civic interest groups more generally. A moderate version of his recommendations was embodied in the Indian Councils Act of 1892, where the senates of four universities—Calcutta, Bombay, Madras and Allahabad—were included as one of the several kinds of corporate bodies entitled to recommend non-official members. In subsequent years, a seat was also awarded to the Universities of Punjab (1909) and Bihar (1917). In the aftermath of the Government of India Act 1919, the Southborough Committee on the franchise recommended admitting planned new universities in Dacca and Nagpur, taking the total number of University seats up to eight.

Interestingly, the Indian Constituent Assembly chose to incorporate university constituencies at the same time when such constituencies were being abolished by the House of Commons. A previous attempt to abolish these in Britain had failed narrowly in 1931. Even back then, critics of such constituencies argued that they were unfair since they gave some persons a 'double vote'. Allowing persons to vote first for the constituency where they resided and then also for the University from which they had graduated was rejected as inconsistent with the principle of one vote for every citizen. There was a second sense in which the interests of graduates were seen as having been given double weightage. Some critics argued that university constituencies were redundant because there were several graduates within the House of Commons—

[61] KT Shah recommended, as a result of these restrictions, that nominated members not be allowed to become ministers. He argued that nominated members ought to be "confined to giving their expert opinion on the matters before the House, and advising on which they are specifically nominated, but not voting on the question" (CAD 8: 112). But since ministers ought to be full members of the house, entitled to vote, nominated members should be excluded from the possibility of holding a ministerial role, he argued. Under the final provision, however, nominated members enjoyed voting rights as well as the opportunity to take on a ministerial role.

numbering close to 220 as one member stated (Hansard 1761 16 March 1931)—who understood the interests of a university:

> I say to the universities, "You are represented in every party in this House; you are represented in every section of this House; you are represented on every bench of this House." If not directly, at any rate there are men here who owe their culture to the spreading of enlightenment by universities. That is the best representation that they can have[62].

The notion that graduates could best represent the interests of the University was also viewed with skepticism. As one member of parliament argued that graduates were not a homogenous community, but came from different walks of life, and varied in their class and occupational status. As a result, it made no sense to speak of the interests of a community of graduates, or to rely on graduates to further the interests of the university:

> After all, of what are those electorates made up? They do not consist of people who are now at the university, except for a very small number of dons; they are people scattered all over the country, and, indeed, all over the world, who have at some time since they left the university received notifications about elections. They have not any corporate interest in political questions, not the corporate interest which people living in the same constituency have. Some of them are engineers, doctors, country parsons, teachers, and persons of leisure. They are people whose education in different schools and universities has led them to take very varied and different interests in life. They are people whose early education has sometimes been in the elementary schools, but more frequently in public schools, and by the time they reach the dignity of the university franchise they have left the university, and have begun their ordinary life among other persons[63].

Further, the suggestion that university constituencies could enhance the competence of the legislative body also faced much criticism. The reason for the inability of university representatives to contribute well lay, firstly, in the intellectual *environment* that prevailed in the universities. One member, for instance, pointed to how their aloofness and divorcement from the actualities of life meant that universities were not capable of independent political thought. Their traditions and "powerful reactionary influence" resulted in a muzzling of political agents and hampered progressive political thought[64]. Others also emphasised the role of the *political party* in tempering potential contributions university members might have made as a result of their learning and intelligence[65]. Political considerations influenced the decisions members from those constituencies took even on educational matters. One member highlighted that only one representative from the universities had voted in favour of the Education (School Attendance) Bill, whereas six had voted against it and five had abstained[66].

Having examined the British case against university constituencies, let me return to their treatment in India at more or less the same time. In the first place, the Indian Constituent assembly removed all special seats, including university constituencies, from the directly

[62] *Hansard* HC Deb 03 February 1931 vol. 247 col. 1671

[63] *ibid.*, cols. 1733-34.
[64] *Hansard* HC Deb 16 March 1931 vol. 249 col. 1752
[65] *ibid.*, cols. 1763, 1770.
[66] Ibid. col. 1751

elected houses of provincial legislatures[67]. Further, the principle of awarding votes to organized corporate interests was also explicitly rejected[68]. 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". This resonated with the line of reasoning prominent in the Indian Constituent Assembly that the adult franchise was the best way to distribute political power, establishing a fairness of equality that eliminated the need for further mechanisms like quotas or special representation.

Yet, in the state legislative councils, matters were different. If previously recognized 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. This was done in two ways. Firstly, whereas the University seats awarded the franchise to persons who had graduated at least seven years ago, this was reduced to a period of three years by the Constituent Assembly. Further, departing from the emphasis on universities, teachers in secondary and senior-secondary schools were extended similar privileges as graduates. This was defended, I will later argue, as necessary to ensure the presence of those who were otherwise highly qualified but could not contest elections. The underlying assumption here was that such persons would, in their choice of a representative, prefer someone like them in the relevant respect: education. Thus, although constituencies aimed at producing elected representatives from within the university were abolished, an attempt was made to secure better educated representatives in the legislature by awarding a 'double vote' to certain persons: first as ordinary voters in State Legislative Assemblies, and then *qua* graduates or teachers in the State Legislative Councils.

The initial proposal before the Constituent Assembly was to leave the composition of provincial legislative councils to the legislative assembly in those units[69]. Various amendments were recommended as members criticized the proposal, and urged that the matter must not be left to legislative assemblies in the state to settle. Although all amendments are not available to us, one member, Shibban Lal Saksena, proposed a clause that sought to incorporate suggestions from five of these. His proposal sought to establish electorates—each of which would have a fixed share of seats—constituted of graduates, members of the "learned professions and specialists in any branch of learning", members of the Senate of various universities in the state, trade unions, and chambers of commerce[70]. Saksena clarified that members of "learned professions" included professors, doctors, engineers and lawyers. Despite Ambedkar's attempt to defend the provision initially proposed, members of the Constituent

[67] 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.
[68] In addition to University Constituencies, the Government of India acts provided for 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.
[69] CAD 9.1: 21-2
[70] ibid. 24

Assembly persisted in their criticism, and eventually agreed to request the Drafting Committee to re-examine the matter[71].

Twenty days later, the drafting committee returned another proposal for legislative councils in the states. This proposal, which would eventually be incorporated in the Constitution without any major amendments, was again criticized on the floor of the assembly. The various groups that Saksena's amendment and others had sought to include—trade unions, chambers of commerce, professionals like lawyers and doctors—had been left out of the final proposal. In particular, some criticized the exclusion of constituencies constituted of agricultural labour[72]. Ambedkar argued that labourers would find adequate representatives in the legislative assembly and, therefore, did not need constituencies set aside for them. When one member protested that something similar could be said of graduates, Ambedkar argued that such constituencies were established "for very different reasons" even as he failed to clarify what these reasons were[73]. Some indication about these reasons can be found in statements made during debate over University constituencies. If representation of interests was repudiated as the rationale for the way the second legislative chamber was conceived, there were references to its role in enhancing the assembly's competence. Some argued that the legislative council's role was to bring into the legislature wise persons—"real intelligentsia, men of real opinion—who would otherwise not subject themselves to the "rough and tumble of active politics"[74].

(V) 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 political power even if this meant bypassing the ordinary democratic process in some ways. This approach towards Constitution-making was far from unique to the Indian case. Rather, as I have shown, the founders drew upon provisions found in American, British and Irish Constitutions to achieve their aims. The Indian case, then, emphasizes a tension found in Constitutional thought across time and political space, between respect for democratic decisions and anxieties about the competence of decision-makers.

[71] ibid. 35-7
[72] ibid. 477-8 (Statement by S. Nagappa); ibid. 484 (Statement by Purnima Banerji)
[73] ibid. 490
[74] ibid. 26-7 (Statement by Mahavir Tyagi); ibid. 33 (Statement by Purnima Banerji)