

The Institutions of Democracy

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This dissertation is solely the work of its author. No part of it has previously been submitted for any other degree, or is currently being submitted for any other degree. To the best of my knowledge, any help received in preparing this dissertation, and all sources used, have been duly acknowledged.

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Abstract

My dissertation is devoted to the question of which political decision-making institutions real-world democratic societies ought to adopt. Following a brief introduction in chapter one, it is structured around three sub-issues.

Part one considers how citizens' conduct in elections ought to be regulated. Chapter two offers a defence of compulsory voting, by appeal to the wrongness of free-riding, and responds to many of the objections raised by compulsory voting's critics.

Chapter three offers a defence of bans on vote buying. I show that recent arguments in favour of permitting vote buying are implausible. I then go on to criticise existing accounts of the wrongness of vote buying, and offer a novel, respect-based account of the wrongness of the practice.

Part two considers whether, and how, persons conventionally excluded from the franchise ought to be included in the democratic process. Chapter four argues that the disenfranchisement of children is unjust. I argue that all major, plausible approaches to the justification of voting rights converge upon a requirement that children from around the age of twelve be enfranchised, and that none of the principal objections raised to child enfranchisement are persuasive.

Chapter five considers the position of the cognitively disabled. I argue that, contrary to hopes expressed in the literature, enfranchising the cognitively disabled is unlikely to make any difference to the democratic processes' under-responsiveness to such persons. Ensuring adequate consideration for the cognitively disabled will require deeper institutional reform. I consider a range of possibilities, ultimately arguing for the creation of a deliberative citizens' assembly to address the issue.

Part three, finally, considers whether the institutions presupposed in parts one and two – universal suffrage, and decision-making via the aggregation of citizens' expressed preferences – can be justified in light of two significant challenges. Chapter six considers the competence objection, advanced by Jason Brennan. I show that Brennan's objection is reliant upon a naïve account of citizens' rights against

risk-impositions, and cannot be sustained on any more plausible view. I also criticise Brennan's preferred 'epistocratic' alternative to democracy.

Finally, chapter seven considers the 'lottocratic' challenge. Several authors have recently argued that substituting universal suffrage and/or aggregative decision-making with some chance-based device would either preserve, or improve upon, the egalitarian appeal of democracy, while realising higher-quality results. I argue that the positive egalitarian case for lottocracy is implausible, and that the comparative egalitarian and instrumental merits of appropriately structured democratic arrangements will generally be superior.

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1. Introduction

1.1. Three Questions in Democratic Theory

In the period immediately prior to the First World War, the basic institutions of democratic government were to be found only in Finland, France, Great Britain, Italy, Norway, Sweden, Switzerland, and a small number of former European colonies – most notably, the United States (Solomon and Malone, 2011, pp. 13-5). Following the conclusion of the war, however, democratic institutions and ideals spread at an extraordinary pace. By 1926, 29 countries had democratised (Huntington, 1991, p. 12). In 1948, the United Nations adopted the Universal Declaration of Human Rights, Article 21 of which states that “[t]he will of the people shall be the basis of the authority of government; [and] this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage...” By 1973, Freedom House classified 44 out of 151 countries as ‘free’, indicating that democratic norms were widely upheld, and 42 as ‘partly free,’ indicating a moderate commitment to democratic norms. The collapse of the USSR saw the number of countries classified as free or partly free jump from 99 out of 167 in 1987-1988 to 141 out of 183 in 1991. Numbers peaked in 2008, with 151 out of 193 countries classified as free or partly free (Solomon and Malone, 2011, p. 20).¹ Over the same period, those societies already possessed of basic democratic institutions came to more fully embody democratic ideals (Keane, 2009). Women gained the right to vote in the vast majority of nations. Plural voting was abolished in Britain in 1948. Indigenous Australians were gradually enfranchised between 1949 and 1965. The passage of the *Voting Rights Act* in 1965 ended the most egregious cases of the disenfranchisement of African Americans in the United States.

Most of us regard these developments very favorably. Global survey data consistently shows strong support for democracy in all parts of the world (Inglehart,

¹ Progress has stagnated in recent years. Diamond (2015, pp. 144-7) counts 25 breakdowns of democracy between 2000 and 2014, only 10 of which have been followed by the restoration of democracy. What democratic hopes there were in movements such as the Arab Spring and Umbrella Revolution have largely been disappointed. Things are changing for the worse in many nations which remain fundamentally democratic. In the US, for example, evidence suggests that the political process has become skewed in favour of socioeconomic elites (Gilens, 2012; Hacker and Pierson, 2011).

2003; Shin, 2007). There is virtual unanimity in the academy that democracy is the sole legitimate form of government. Democratic theory is replete with sophisticated accounts of the value of democracy. Democracy is said to more robustly protect individuals' human rights (Christiano, 2011), better protect against humanitarian disasters (Sen, 1999), realise better quality decisions (Estlund, 2008; Landemore, 2013b), or better respect fundamental values like freedom (e.g. Gould, 1988; Pettit, 2012; Philpott, 1995) and equality (e.g. Beitz, 1989; Christiano, 2008; Kolodny, 2014b), than any feasible alternative means of making political decisions. Amartya Sen (1999, p. 5) captures the prevailing mood nicely;

While democracy is not yet universally practiced, nor indeed uniformly accepted, in the general climate of world opinion, democratic governance has now achieved the status of being taken to be generally right. The ball is very much in the court of those who want to rubbish democracy to provide justification for that rejection.

This familiar narrative of a popular, political, and academic consensus over democracy is perfectly right, at least at a certain level of abstraction. Yet it also tends to obscure the fact that, on at least three important, interconnected questions, democratic theorists remain deeply divided. These are the questions of *definition*, *justification*, and *institutions*.

The definition question asks, simply: *what is democracy?* The concept of democracy is clear enough: rule by the people.² But there are many conflicting conceptions of what rule by the people properly consists in.³ Many democratic theorists think that equal voting rights are constitutive of democracy (e.g. Arneson, 2004, pp. 44-6; Christiano, 2008, p. 102; Dahl, 1989, pp. 108-20; Estlund, 2008, p. 65; Pogge, 2008, pp. 152-3; Rawls, 1971, pp. 222-3; Riker, 1982, p. 1). Others, however, disagree. John Stuart Mill (1861, ch. 8), for example, held that democracy is consistent with unequal distributions of voting rights. Some deliberative democrats offer conceptions of democracy on which voting plays no necessary role at all (e.g. Gutmann and

² The term 'democracy' is derived from the Greek *demokratia* – the people (*demos*) rule (*kratos*).

³ See Hart (1961, pp. 155-60) and Rawls (1971, pp. 5-6) on the concept/conception distinction in political philosophy.

Thompson, 2004, pp. 18-9).⁴ Many theorists hold that majority rule is constitutive of democracy (e.g. Arneson, 2004, pp. 44-6; Christiano, 2008, pp. 103-4).⁵ Others deny this (e.g. Dahl, 1989, pp. 109-11; Novak, 2014; Saunders, 2010a). Still others insist that democracy requires respect for individual rights (e.g. Dworkin, 1996), or practices of mutually respectful reason-giving (e.g. Cohen, 1989b; Gutmann and Thompson, 2004), while yet more democratic theorists (e.g. Przeworski, 1999; Schumpeter, 1950, ch. 23) resolutely deny that democracy necessarily involves either. And so on. What there is supposed to be consensus *over* in democratic theory, then, is unclear to say the least.

The justification question asks: *which fundamental value, or values, ground our basic normative commitments to democracy?*⁶ Why is it that citizens have claims that the political decisions to which they are to be subject be made democratically? What justifies the practical authority of democratic governments? Instrumentalists hold that democracy is justified on that grounds that “...over the long haul it gives rise to results that are morally superior to the results that any feasible alternative procedure would produce” (Arneson, 2003, p. 123).⁷ Critics of such accounts, however, point out that that proposition is desperately hard to believe. Plato (1974, p. 282) famously thought democracy akin to a ship taken over by an incompetent, drunken crew with no interest in listening to the ‘true navigators’ aboard. Modern political science lends some support to Plato’s scepticism. The probability of any individual’s being decisive over any democratic decision is always asymptotically close to zero (Brennan and Lomasky, 1993, ch. 4). This, in turn, gives rise to the phenomenon of ‘rational ignorance’. Since individual citizens cannot hope to have any impact on political outcomes, it is irrational to incur the costs of gathering information (Downs, 1957; Schumpeter, 1950, ch. 21). The result is a shockingly uninformed public. 79% of Americans cannot name either of their state’s senators, for example (Hardin, 2006, p. 180). It seems likely that, in many circumstances,

⁴ Though, deliberative democrats (e.g. Cohen, 2009) do usually acknowledge that voting is at least *consistent* with democratic principles and will, in practice, need to be employed to resolve post-deliberative disagreements.

⁵ What is meant by majority rule is often left obscure. There are many plausible aggregation methods, whose verdicts can conflict (Coleman and Ferejohn, 1986; Riker, 1982, ch. 4).

⁶ For a clear exposition of the justification question, see Kolodny (2014a, p. 197).

⁷ Prominent instrumentalists include Arneson (2003; 2004; 2009), Landemore (2013b), and Wall (2006). Estlund (2008) is also an important instrumentalist. His view, however, is more constrained. Democracy is justified, Estlund claims, on the grounds that, of procedures which could not be reasonably rejected, it realises the highest-quality results.

alternatives to democracy – epistocracy (rule by the knowledgeable), for example – would realise higher-quality results (Estlund, 2008).⁸

Non-instrumentalists hold that democratic procedures themselves, independent of their results,⁹ are constitutive of the requirements of some fundamental value or other – freedom or equality, for instance.¹⁰ Arguments of this kind, also, face heavy criticism. Freedom-centric approaches confront the apparently devastating *incompatibility objection* (Christiano, 1996, pp. 24-6).¹¹ In general, to enjoy freedom in a choice is to exercise control over that choice – to wit, for the outcome to counterfactually depend upon one’s will, and one’s will alone. Democratic decisions, however, are inherently collective; a function of the will of all citizens (or, at least, all voters). Political decisions, then, can either respect individual freedom, or be made democratically. They cannot, however, do both. Equality-centric accounts, by contrast, face the apparently devastating *lottery objection* (Estlund, 2008, ch. 4). Chance-based decision-procedures (tossing coins, drawing lots, and so on) do not involve any obvious affront to individuals’ equal moral standing. They do not, for example, establish social hierarchies, express inegalitarian attitudes, or distribute political power unequally. Yet, surely, we do not think such procedures are on a moral par with democracy.

To be clear, the point here is not that any of these objections succeeds. Indeed, in the pages to follow, I engage critically with several of these objections. The point is simply that even if most theorists agree that democracy is justified, there is a great deal of disagreement over the grounds of that justification.

Finally, the institutions question asks: *which institutional arrangements ought democratic societies adopt, in practice?* Here, too, controversy reigns. Should, for example, democracies limit the decisional power of the legislature via rights-based

⁸ Brennan (2011b; 2016) positively *embraces* this, arguing against democracy and in favour of epistocracy. I respond to his arguments in chapter six.

⁹ Though non-instrumentalists – with the exception of Waldron (1999, pp. 107-16) – do generally accept that the instrumental merits of democratic procedures must also, in practice, play a crucial role in their justification.

¹⁰ Prominent freedom-centric accounts are defended by Gould (1988) and Pettit (2012). Prominent equality-centric accounts are defended by Beitz (1989), Christiano (2008), and Kolodny (2014b).

¹¹ See also Altman and Wellman (2009, pp. 17-20), Brennan (2016, pp. 59-60), Buchanan (1998), Kolodny (2014a, pp. 17-8), and Richardson (2002, pp. 59-60).

judicial review (Dworkin, 1996), or not (Waldron, 2006)? Should voting be optional (Brennan, 2014), or compulsory (Hill, 2014)? Should the voting age be set at eighteen (Chan and Clayton, 2006), sixteen (Peto, Forthcoming), ten (López-Guerra, 2014, ch. 3), or abolished altogether (Cook, 2013)? Should – as in most democracies (Beckman, 2014) – the cognitively disabled be disenfranchised (Dahl, 1989, pp. 124-31), or should such restrictions be abolished (Barclay, 2013)? Should citizens be permitted to buy and sell votes (Freiman, 2014), or not (Archer and Wilson, 2014)? Should we work towards global institutions of democratic decision-making (Valentini, 2014), or not (Miller, 2010)? Should we seek to make democratic politics more deliberative by holding regular mini-publics (Dryzek, 2010, ch. 8), or not (Lafont, 2015)? Should the better-educated be given an increased number of votes (Caplan, 2006, pp. 197-8), or not (Beitz, 1989, pp. 36-40)? And so on. Consensus (such as it is) over the value of democracy in the abstract has yielded little agreement over how democracy should be realised in practice.

Democratic theory, then, is a far more contested and contentious field than the ‘consensus-narrative’ suggests. As Robert Dahl (2006, p. 1) puts it,

...there is no democratic theory – there are only democratic theories.

1.2. The Institutions Question in Focus

Democratic theorists working within philosophy have (with some notable exceptions) tended to concentrate their efforts upon issues arising out of the definition and justification questions. That, I think, is a shame. Whatever democracy ultimately is, and whatever fundamental values ground our normative commitments to it, most of us are going to live in societies that are more or less democratic (at least, as the term is conventionally employed). These societies face pressing questions over how their political processes ought to be structured. The answers to these questions often depend, in part, upon matters of philosophical controversy. Whether voting should be compulsory partially turns upon whether there is a moral right not to vote. Whether democracies should permit individuals to buy others’ votes partially turns upon whether it is morally permissible to convert material wealth into political power. And so on. Philosophers, though not silent on

such matters, have contributed far less to such discussions than they might otherwise have done. In my view, debates over such issues have been impoverished in consequence. Moreover, such debates have an obvious, immediate practical relevance. In focusing upon more abstract issues, philosophers have missed important opportunities to contribute to efforts for progressive democratic reform.

For these reasons, my dissertation is focused squarely – and solely – upon the institutions question. I will have little to say on the definition and justification questions.¹² This raises two potential worries about the project. It is worth addressing these at the outset.

The first worry would hold that the project is incoherent. How is it possible to address the institutions question without, first, developing an answer to the definition question? The institutions question, after all, is about *democratic* societies. This, however, misunderstands my project. We obviously cannot proceed without *a* definition of democracy if there is to be any clarity about the kinds of societies whose institutional arrangements we are concerned with. Yet, my interest is not in attempting to offer institutional recommendations for democracy *as it should, ideally, be conceived*. Rather, my interest is in the institutional arrangements *real-world* societies conventionally regarded as democratic ought to adopt. We need simply adopt a definition of democracy which picks out those societies. I, therefore, adopt the following definition;

Democracy: A system for the making of political decisions in which all sufficiently competent adult citizens have the right to vote, and decisions are made by the aggregation of voters' equally weighted expressed preferences, or by their elected representatives.

This definition is very inclusive. It is compatible with decision-making by a range of aggregation methods – plurality rule, simple majority rule, Borda count, proportional representation, and so on. Though it requires the enfranchisement of all sufficiently competent adult citizens (universal suffrage, as conventionally

¹² Though, of course, given the interconnections between all three questions, much of what I say may be *relevant* to other discussions.

understood), it does not require the enfranchisement of all *and only* such persons. On my definition, democracy is compatible with enfranchising children, the cognitively disabled, resident aliens, and even foreigners. It requires that political decisions be made by voting, but not that those decisions remain unchecked by other branches of government. Accordingly, it is compatible with, though does not require, constitutional constraints upon legislative authority, and rights-based judicial review. It is compatible with representative democracy, direct democracy, or a mixture of the two. With presidential and parliamentary systems. And so on.

A definition of this sort is appropriate for two reasons. First, though I do not proffer the above as an answer to the definition question,¹³ I do think that political systems in which decisions are made by universal suffrage and the aggregation of voters' preferences conventionally attract the label 'democratic'.¹⁴ Second, even if that were not so, it is certainly the case that universal suffrage and aggregative decision-making are central features of a great many political societies in the real world. Whether or not those societies are democratic in some deep sense, there is an urgent need to know how, morally, political decision-making procedures in such societies ought to be structured. That is the project to which my dissertation aims to contribute.

The second worry, then, would hold that the project is pointless. One might think that the answers to the various institutional questions democratic societies face require and/or follow trivially from whatever the best answer to the justification question turns out to be. The fundamental values which ultimately ground our democratic commitments will have a substantial bearing upon the institutions democracies ought to adopt in practice. Offering guidance of this sort is among the stated objectives of at least some theorists concerned with the justification question (e.g. Kolodny, 2014b). Proponents of this worry would hold, then, that there is no useful purpose served by attempting to address the institutions question independently of the justification question. Answers to the former must necessarily be parasitic upon answers to the latter.

¹³ It would clearly be unsatisfactory on that score, insofar as it entails that voting is essential for democracy. The Ancient Greeks, famously, appointed magistrates, jurors, and members of the Council of the 500 by lot, rather than by voting (Manin, 1997, ch. 1). Some contemporary theorists think that, ideally, democracy would not involve voting at all (e.g. Cohen, 1989b).

¹⁴ Though, of course, *desirable* democratic arrangements go well beyond such institutions.

The justification and institutions questions are obviously related. For two reasons, however, answers to the former do not straightforwardly entail answers to the latter. First, while all accounts of the justification of democracy do entail that political societies have reason to adopt *some* institutional arrangements, none provides answers to all the institutional questions that might arise.¹⁵ Kolodny's (2014b) account, for example, holds that democracy is justified as a necessary condition of affording individuals equal opportunities for political influence. This obviously rules out certain institutional arrangements. Race-based disenfranchisement, for instance. But it is simply silent over other many others. Whether voting should be compulsory, for example. We must appeal to other considerations to come to a determination on such questions.

Second, political institutions can affect the degree to which many different moral values are realised. Such effects ought to be considered in the design of democratic institutions, whether or not the values in question are those which ultimately ground our democratic commitments. By analogy, public healthcare is plausibly justified as a means of promoting human wellbeing. But it obviously does not follow that welfarist considerations are all that matter in the design and operation of health systems. Other values are also at stake – equality of opportunity, respect for autonomy, efficiency, and so on. Welfarist considerations sometimes need to be traded off against these other values. Similarly, then, whatever the value or values which ground our democratic commitments, there will be a wide range of other values that must also be considered in determining how democratic decision-procedures ought to be structured in practice. Answers to the justification question explain why political decisions ought to be made democratically in the first place. But they do not, in any straightforward way, entail conclusions as to how democratic institutions ought to be structured in practice.

For the same reasons, answers to institution-level questions do not imply answers to the justification question. Rights-based judicial review, for example, might be justified on instrumental grounds. But that goes no distance to showing that our

¹⁵ Even pure instrumentalists run out of answers in cases where the instrumental prospects of competing arrangements are equally good.

democratic commitments are fundamentally grounded upon instrumental considerations. Values can be *relevant* to the design and operation of democratic institutions, without being the ultimate *ground* of their justification. The justification and institutions questions are, as such, related. But they are also, importantly, independent.

Such considerations aside, it must surely be acknowledged that questions over the design and operation of democratic institutions are both ubiquitous and pressing in real-world politics. It must also surely be acknowledged that if democratic theorists were to wait for the development of wholly satisfactory answers to the definition and justification questions before considering institutional matters, we should be required to wait a very long time, indeed. Debates over these questions are centuries-old. It is by no means certain that they shall ever be satisfactorily resolved. If it is possible to make progress on the institutions question, while remaining agnostic with respect to the justification and definition questions, then, I think we ought to do so.

1.3. Methodology

Before giving an overview of my dissertation, it is worth briefly considering some methodological issues. Political theorists have been much interested in the so-called ‘ideal/non-ideal theory debate’ in recent years.¹⁶ For our purposes,¹⁷ we can understand ideal theories as those which presuppose background conditions superior in some relevant respect to those which obtain in the real world, and non-ideal theories as those which do not.¹⁸ Rawls’ special conception of justice is an ideal theory, insofar as it presupposes, *inter alia*, that all persons know, accept, and strictly comply with the principles of justice – something persons do not, and would not, do in real life (Rawls, 1971, pp. 142-5). Classical utilitarianism is a non-ideal theory, insofar as it simply requires agents to maximise utility, whatever the circumstances.

¹⁶ For excellent overviews, see Hamlin and Stemplowska (2012) and Valentini (2012).

¹⁷ There are a range of ways of drawing the distinction (Hamlin and Stemplowska, 2012, pp. 48-52). This, however, is the salient distinction for our purposes.

¹⁸ Strictly, there is no binary distinction between ideal and non-ideal theories in this sense, but rather a continuum of more and less idealised theories (Hamlin and Stemplowska, 2012). We can set aside this complication for our purposes.

Virtually all figures in the debate acknowledge the value of non-ideal theory. As such, discussion has largely centred around the value, or otherwise, of ideal theory. Critics (e.g. Farrelly, 2007; Sen, 2010; Wiens, 2012) argue that ideal theory is useless when it comes to making judgements of comparative justice in the real world, and therefore in guiding action. The fact that justice would require some course of action were the world a radically different place is neither here nor there with respect to what justice requires in the world as it is. Worse, as the problem of the second-best demonstrates, acting upon the recommendations of ideal theories where the conditions they presuppose fail to obtain may lead to worse results than might have been realised had some other set of recommendations been followed.¹⁹ Such authors urge political theorists to abandon ideal theory in favour of approaches of more immediate practical application.

That is much too quick. As defenders of ideal theory point out, the mere fact that a theory makes demands of individuals that they are unlikely to satisfy does not, in itself, show that those demands are not truly demands of justice. Our failure to satisfy those demands might itself be morally criticisable (Estlund, 2014). Such objections also risk proving too much. A great deal of academic work – certain advances in pure mathematics, for example – lacks reasonably foreseeable practical application, and yet is surely not valueless. Ideal theories may also have an important epistemic role to play in the development of non-ideal theories (Gilibert, 2012, pp. 45-9). It may, for instance, be easier to identify injustices, the amelioration of which we ought to work towards under non-ideal conditions, if one is possessed of a demanding ideal theory.

Nevertheless, there is an important lesson, here: theorists ought to adopt a mode of theorising proportionate to their theoretical objectives.²⁰ Theorists seeking to articulate principles for an ideally just state of affairs may reasonably presuppose the absence of, for example, racial prejudice. Such prejudices are an obvious source of social injustice, and would as such be absent from ideally just states of affairs. Theorists aiming to offer recommendations for the alleviation of racial inequality in

¹⁹ See Lipsey and Lancaster (1956-7) on the problem of the second-best.

²⁰ My discussion in this paragraph has been much informed by Valentini (2009, pp. 351-5).

the real world, however, obviously ought not do so. The existence of such attitudes is likely to have an important bearing on the probable success of any attempt to overcome racial injustice. Different theoretical objectives license different theoretical practices.

Now, non-ideal theorising is plainly appropriate for my project, for three reasons. First, attempts to offer guidance with respect to the design, operation, and reform of real-world democratic institutions would do well to avoid idealisation, or else risk issuing conclusions that are simply otiose. Second, some of the discussion to follow engages contemporary critics of democratic institutions, all of whom claim that democratic institutions in the real world promote bads of various kinds (elite bias, for example). It would hardly be a convincing defence of democracy to argue that were the world a different place, democratic institutions would not produce those bads. Finally, democratic institutions will have a crucial role to play in any attempt to realise any of the more ambitious, ideal states of affairs described by other political theorists. Such attempts will require collective action, to be organised and regulated by governments. Assuming that such governments will, generally, be democratic, there is a particular need to consider how democratic institutions, in the real world, might be reformed such that they might produce more desirable outcomes.

Non-ideal theory, however, is not without its challenges. There is massive variability in real-world conditions. Our knowledge of those conditions is often incomplete, as is our understanding of the probable effects of introducing various institutional reforms. How serious a difficulty these considerations pose is hard to judge in advance of actually doing some non-ideal democratic theory and seeing if concerns arise. Assuming they do, however, they surely need not deter us from the project entirely. On the contrary, they should simply prompt us to adopt appropriate philosophical practices. Standard philosophical virtues – clarity, precision, honesty, and so on – aside, three such practices will, I think, be of particular importance.

First, it is plainly not acceptable for non-ideal theorists to rely only upon folk presuppositions with respect to the state of the world. Modern social science has shown us that a great many of these presuppositions are simply false. Theorising

premised solely upon such presuppositions is, as such, of limited value. Instead, non-ideal theorists ought to be informed – to the greatest extent possible – by the relevant social science.²¹ Fortunately, political institutions have been the object of intensive study in the social sciences for many decades. We shall draw heavily upon this body of knowledge (together with evidence from other empirical disciplines) as we proceed. We cannot reasonably expect all the presuppositions upon which we must rely to have been validated in this way. Some questions have not been extensively studied. Controversy prevails over others. Even with respect to claims for which there is substantial evidence, we can at most have a qualified degree of confidence. Disconfirming evidence might be produced in the future. Real-world conditions might change. Again, however, such worries need not deter us. We must simply proceed in a manner suitably deferential to these difficulties. The latter two practices are significant in this respect.

Secondly, then, non-ideal theory must be appropriately qualified. Theorists ought to articulate which background conditions are presupposed by their theory, be upfront where there is uncertainty as to whether those conditions obtain in the real world (in virtue of either conflicting evidence, or a lack thereof), and be clear that any normative recommendations they offer are conditional upon those background conditions being in place.

Finally, where non-ideal theorists are in the business of arguing for reforms to social institutions, they must acknowledge that, even armed with extensive empirical research, the probable effects of institutional reforms are difficult to predict. Reforms do not always achieve their desired outcomes. Other times, they have unexpected, sometimes unwelcome, consequences. For that reason, non-ideal theorising ought to be modest. Theorists ought to make clear that the claims they defend are *pro tanto* – susceptible to being outweighed by countervailing considerations. For the same reasons, non-ideal theorists should avoid dogmatism. To the extent that evidence can be produced demonstrating that some institutional reform fails to produce the outcomes intended to justify that reform, non-ideal theorists must be prepared to concede that (absent some other justification), the case for that reform fails.

²¹ On empirical evidence in democratic theory, see also Fung (2007a) and Thompson (2008a).

For better or worse, and no doubt imperfectly, I have sought to follow these practices in the chapters that follow.

1.4. Dissertation Overview

It would obviously be impossible for anyone to give a complete account of the institutions real-world democracies ought to adopt, and I shall make no such attempt, here. Rather, I simply aim to contribute to a series of debates over a series of different democratic institutions. The chapters to follow are structured around three particular sub-issues.

Part one of my dissertation is concerned with how states may permissibly regulate citizens' conduct in elections. Chapter two considers whether citizens who are entitled to vote ought also be required to vote – i.e. whether voting ought to be compulsory. As a complement to the more familiar egalitarian argument, I offer a defence of compulsory voting which appeals to the wrongness of free-riding. I also respond to the case against compulsory voting, arguing that its opponents typically rely upon implausible normative claims, mischaracterisations of compulsory voting, or empirical claims unsupported by the relevant social science.

Chapter three considers the morality of vote buying. I argue both that recent arguments in favour of the practice are implausible, and that existing accounts of the wrongness of vote buying are unsatisfactory. I then offer a novel, respect-based account of the wrongness of vote buying, showing that it is able to resolve several puzzles about vote buying, and withstand numerous lines of objection.

Part two of my dissertation is concerned with whether, and how, groups conventionally excluded from the franchise ought to be accounted for in the democratic process. Chapter four argues that the ongoing, blanket disenfranchisement of children is unjust. I argue that all major, plausible approaches to the justification of voting rights converge upon a requirement that children from around the age of twelve be enfranchised. I also consider a range of objections that

have been raised in the literature to the enfranchisement of children, arguing that none are persuasive.

Chapter five considers the related issue of persons with cognitive disabilities. Recent work in democratic theory has criticised the disenfranchisement of such persons as unjust. I argue that this is, indeed, the case. I also argue, however, that hopes that enfranchising the cognitively disabled might help address the democratic process' under-responsiveness to such persons' interests are likely to be disappointed. Ensuring adequate consideration for the interests of the cognitively disabled will require deeper institutional reform. I consider a range of possibilities in this respect, ultimately arguing for the creation of a citizens' assembly to be tasked with reviewing existing arrangements, and proposing reforms to be put to the public in popular referenda.

Part three of my dissertation takes a step back, asking whether the fundamental institutions of democracy (as I have defined it) are justifiable in light of two recent, sophisticated challenges. Chapter six considers the 'competence objection', advanced in recent literature by Jason Brennan (2011b; 2016). Brennan argues that universal suffrage is unjust on the grounds that allowing ignorant and irrational citizens to exercise political power violates others' claims against exposure to undue risk. I show that Brennan's objection is reliant upon a naïve account of citizens' rights against risk-impositions and that the objection cannot be sustained on any more plausible view. I also briefly consider the merits of his own preferred 'epistocratic' alternative to democracy, and argue that it would tend to produce lower-quality results than appropriately structured democracies.

Chapter seven considers the challenge posed by proponents of chance-based (so-called 'lottocratic') alternatives to universal suffrage and aggregative decision-making. A number of authors have recently argued that substituting either or both of these institutions for a range of chance-based devices would either preserve, or improve upon, the egalitarian appeal of democracy, while realising higher-quality results. I offer a three-part response. First, I argue that the positive egalitarian case for these institutions rests upon a series of implausible normative claims. Second, I argue that the comparative egalitarian merits of universal suffrage and aggregative

decision-making are generally superior. Finally, I draw upon evidence from the social sciences to show that such institutions are likely to realise lower-quality results than well-structured democracies.

The dissertation concludes with a brief summary, together with some suggested directions for future research.

2. Compelling Citizens to Vote: An Argument from Free-Riding

Turnout is in decline in established democracies worldwide (Blais and Rubenson, 2013). Where, in the mid-1800s, 70%-80% of eligible voters regularly participated in US Presidential elections, turnout has averaged just 56% since 1972. Average turnout in general elections in the UK has fallen from 76.64% during the period 1945-1992, to 64.68% since 1997. Average turnout in Canadian federal elections has fallen from 74.52% during the period 1940-1979, to 62.5% since 2000. For most democrats, these trends are alarming. 'Rule by the people' looks far less attractive with an effective electorate of only 60% of eligible voters. Lower turnout is associated with a range of ills, including increased inequality (Mueller and Stratmann, 2003), and corruption (Birch, 2009b, pp. 132-3). Compulsory voting is amongst the most effective means by which this decline might be arrested. When effectively enforced, compulsory voting increases turnout by 12%-13% on average, and sometimes far more (Birch, 2009b, ch. 5). Australia, for example, introduced compulsory voting in 1924, and saw average turnout rise from 64.2% of registered voters to around 95%, where it has remained ever since (Jackman, 2001, p. 16316).

Compulsory voting, however, is deeply controversial. Its opponents claim (1) that compulsory voting is coercive, (2) that coercion is morally wrong unless backed by some compelling justification, and (3) that no such justification is available for compulsory voting. This chapter offers a two-part response to (3). First, I offer an argument from *free-riding* which, though gestured towards by others (Engelen, 2007, pp. 30-1; Galston, 2011; Lijphart, 1997, p. 11; Waldron, 1998, p. 318; Wertheimer, 1975), has yet to receive sophisticated exposition and defence.²² Second, I show that the typical objections to compulsory voting rely upon

²² Other arguments have been offered. Chief among these is the egalitarian argument, which I both endorse, and discuss in section three. Others, however, face difficulties. Some – e.g. Hill (2015a, pp. 69-71) – hold that compulsory voting merely enforces citizens' consequentialist duties to vote. Yet whether there *is* a consequentialist duty to vote is highly controversial, given the causal inconsequentiality of individual votes (Brennan and Lomasky, 2000). Others – e.g. Hasen (1996) – hold that compulsory voting promotes democratic legitimacy by ensuring high turnout. Yet it is often left unclear quite what democratic legitimacy is supposed to mean in such arguments, rendering them difficult to evaluate. Still others – e.g. Hill (2015b), Lacroix (2007), and Lardy (2004) – appeal to non-standard conceptions of liberty, with the aim of demonstrating that compulsory voting does not undermine citizens' freedom, properly understood. Lacroix's argument has been challenged, I believe decisively, by Brennan (2014, pp. 65-70) and Lever (2008). Lardy and Hill's arguments are more convincing. Unfortunately, they are unlikely to be dialectically effective. Critics of compulsory voting characteristically reject the neo-republican conception of liberty to which they appeal.

unsupported empirical claims, mischaracterisations of compulsory voting, or implausible normative commitments. States, I conclude, may permissibly compel the vast majority of citizens to vote.

Compulsory voting might be implemented in many ways. It is important, then, to get clear immediately about two aspects of the model I wish to defend. First, I do not favour systems in which citizens are subject to coercible requirements to cast a valid ballot. Enforcing such a requirement would require some mechanism to check that citizens had filled in their ballot correctly, undermining the secret ballot.²³ Instead, I favour systems in which citizens are required to either cast an absentee ballot, or attend a polling station on election day. This is, in practice, what compulsory voting generally involves in the real world. Citizens, as such, remain free to abstain under compulsory voting. Though the vast majority of citizens go on to vote, they can simply leave once their attendance has been registered, or submit a spoiled ballot.

Second, like most other proponents of compulsory voting (e.g. Hill, 2014), I favour regimes in which penalties for abstention are light, but effectively enforced. In Australia, for instance, abstention is (initially) punishable by a fine of \$20 (Hill, 2014, p. 115). Bolivia, by contrast, punishes non-voters by barring them from public employment, performing certain bank transactions, and getting a passport for ninety days (Brennan, 2014, p. 18). Punishments of this magnitude are excessive by standard criteria. More importantly, they are also probably unnecessary. While evidence indicates that effective enforcement is necessary for compulsory voting to impact turnout, most effective regimes do not impose heavy penalties for abstention (Birch, 2009b, pp. 8-11, 89-95).

A further clarification: I wish to defend compulsory voting in the context of referenda and elections for public office in established liberal democracies only.²⁴ Other contexts, though equally important, give rise to a range of considerations that would overcomplicate matters, here. In some developing nations, for example, citizens who choose to vote are subject to threats of serious harm, a consideration which obviously militates against compulsory voting. I therefore set such contexts

²³ Some countries – e.g. Australia – do technically require citizens to cast a valid ballot, though these requirements are generally not enforced (Pringle, 2012).

²⁴ I am heavily indebted to Hill (2014, pp. 114-5) throughout this paragraph.

aside. I will also assume that elections meet the following three conditions. First, there must be no excessive barriers to accessing the franchise. Citizens must not, for instance, be required to produce forms of identification they are unlikely to possess in order to vote. Second, voting must be relatively low-cost. Citizens must not, for instance, be required to queue for many hours or travel great distances to vote. Third, elections must be genuine – i.e. they must not be a sham, or otherwise subject to manipulation. Compulsory voting would obviously be perverse were voting either unreasonably difficult, or irrelevant to political outcomes. I will simply assume, then, that elections are well-structured in the manner described.

Now, though it has received very limited positive defence, the free-riding argument has been the subject of extensive criticism. My strategy, then, will be somewhat defensive. I begin, in section one, by outlining an intuitively appealing, initially plausible version of the argument, together with the key considerations upon which it is reliant. Section two will then refine the argument in dialogue with the most important objections raised in the literature. For reasons that will become clear, the free-riding argument depends upon the claim that compulsory voting does not entail unacceptable moral costs. Section three, then, responds to a range of arguments purporting to show that compulsory voting entails such costs. Section four concludes.

2.1. Abstention as Free-Riding

Free-riding consists in the consumption of collectively produced public goods without making appropriate contribution to the system by which those goods are produced. Public goods are those which exhibit jointness in supply and/or jointness in consumption (Cullity, 2008, p. 9). A good exhibits jointness in supply if supplying the good to one member of a group one means supplying it to all members of that group. Providing clean air to some citizens in a particular area, for example, entails providing clean air to all citizens in that area. A good exhibits jointness in consumption where one group member's consumption of that good does not undermine others' consumption of that good. Buses with plenty of empty seats, for example, exhibit jointness in consumption. My travelling on the bus does not diminish the benefits others derive from bus travel.

Free-riding is objectionable because, and where, it is *unfair*. The unfairness in question consists in persons affording themselves a kind of objectionable privilege: arrogating certain preferential advantages to themselves, while depending upon others declining to do so (Cullity, 1995, pp. 22-32). Fare-evaders on public transport afford themselves the privilege of free travel, while depending upon others' failure to exercise that same privilege. The benefits of public transport would not exist at all were no-one willing to pay their fare. *Mutatis mutandis* for persons who refuse to pay their taxes while nevertheless enjoying the public goods made possible by others' contributions.

The central claim of this chapter is that non-voters unfairly free-ride upon voters. Demonstrating this requires us to show that voting produces some public good, the benefits of which are enjoyed by non-voters who fail to make appropriate contribution to its production.

Existing statements of the free-riding argument, such as they are, are almost never explicit about what this public good is supposed to be. Wertheimer (1975, pp. 279-82) is an important exception. He claims that *competitive elections* are a public good, and that "[n]on-voters... free-ride upon voters' maintenance of the electoral system." This line of argument is too coarse-grained. It may well be that non-voters benefit in some sense from voters' efforts to maintain the electoral system. The trouble, however, is that for non-voters to plausibly count as free-riders, they must surely benefit from others' efforts all things considered. John's failure to contribute to some system which confers a \$50 benefit upon him while imposing costs of \$500 surely does not amount to unfair free-riding. And, as Hill (2014, p. 192) points out, many non-voters are plausibly left worse off by others' political activity. The over-participation of some groups relative to others causes politicians to over-allocate resources to the former, and under-allocate resources to the latter.²⁵ For many non-voters who belong to groups which under-participate, the costs of others' participation, overall, will plausibly outweigh the benefits. This line of argument, then, will fail to legitimate compelling a substantial number of citizens to vote.

²⁵ This is an empirical claim, the evidence for which I discuss in section three.

I suggest a more fine-grained approach. Political participation by members of particular interest groups gives politicians incentives to allocate resources to those groups, in an attempt to win their electoral support.²⁶ Voters from particular interest groups, then, collectively produce the good of governmental responsiveness to those groups. The benefits of their doing so accrue to both voting and non-voting members of those groups. Governmental responsiveness is thus a public good, insofar as it exhibits jointness in supply. Non-voters free-ride upon voters who belong to the same interest group (or groups) as themselves, enjoying the benefits of governmental responsiveness while failing to contribute, by voting, to its production.

This approach avoids the concern raised in the previous paragraph. The costs of others' political participation *overall* may well outweigh the benefits for many non-voters. That, however, is perfectly consistent with non-voters benefiting, all things considered, from political participation *by members of the interest group (or groups) to which they belong*. Such non-voters would plausibly be even worse off, were it not for participation by co-members of their interest group(s).²⁷

The idea that voters produce responsiveness to the interest group(s) to which they belong is an empirical claim for which there is strong support. Many studies have demonstrated a link between rates of participation by particular interest groups, and the allocation of resources to those groups by government. To select just a few examples, Aidt and Dallal (2008) show that the enfranchisement of women in Western Europe between 1869 and 1960 brought about increased spending (0.6%-1.2% of GDP in the short term, with more substantial long-term increases) on social services upon which women were more likely to be reliant. Abou-Chadi and Orłowski (2015) show that that the abolition of property and income requirements on the franchise in Western Europe between 1880 and 1938 resulted in increased spending on social services and public goods upon which the worse-off were more

²⁶ By interest groups, I simply mean groups of persons with at least some non-trivial common interests. Each of us is a member of many different interest groups – racial, gender, socioeconomic, geographical, and so on.

²⁷ This strategy has two further benefits. First, it avoids the concerns raised by Lever (2009, p. 70; 2010, p. 913) and Wellman (2005, pp. 56-65) over the status of 'high turnout' and 'healthy democracy' as public goods. Second, it helps resolve concerns raised by Brennan (2014, p. 74) and Lever (2009, p. 69; 2010, p. 913) over the consistency between the free-riding and egalitarian arguments. I discuss this issue in section three.

likely to be reliant.²⁸ Husted and Kenny (1997, pp. 56-7, 76) show that the abolition of poll taxes and literacy tests in the Old South between 1956 and 1968 brought about enormous increases in African American participation and, subsequently, substantial increases in state spending on welfare programmes upon which African Americans were more likely to be reliant. Finally, Martin (2003, pp. 116-23) demonstrates that counties in the US with higher rates of participation, on average, receive substantially more federal grant expenditure per capita than counties with lower rates of participation, even controlling for factors like 'need' (e.g. unemployment, crime rates), and electoral competitiveness.

Abstention, then, is a form of free-riding. Non-voters enjoy the benefits of governmental responsiveness, produced by members of the interest groups to which they belong who choose to vote, without making appropriate contribution to the political process by which they are produced.

It is important not to move too quickly, however. The argument relies crucially upon the idea that abstention is not merely free-riding, but *unfair*. It is this unfairness which is supposed to legitimate compelling individuals to vote, just as the unfairness of fare-evasion and tax-evasion legitimates the punishment of fare-evaders and tax-evaders. Not all free-riding, however, is unfair. The severely disabled, for example, often consume public goods (e.g. public healthcare) without contributing to their production. Their failure to contribute to the production of these goods, however, is surely not unfair. We cannot, as such, move automatically from the claim that non-voters are free-riders to the conclusion that citizens may legitimately be compelled to vote.

This, however, is less troubling than it seems. There are three kinds of cases in which it is standardly recognised that free-riding is not unfair. First, cases in which persons (e.g. the severely disabled) lack the capacity to contribute to the production of public goods from which they benefit. Second, cases in which contributing would involve costs greater than the value of the benefits received. It is hardly unfair to refuse to contribute \$200 to the production of a public good worth only \$2 to oneself, for

²⁸ These results are conditional upon the absence of counter-majoritarian barriers to progressive change (e.g. aristocratic upper houses).

example.²⁹ Finally, cases of ‘unjust benefits’. Suppose some gang steals all the cash from my neighbour’s safe. To apologise for any disturbance, they leave \$500 on the doorstep of every person in the street. We should hardly wish to conclude that I thereby have obligations to contribute to the gang’s future operations. Rather, as Pasternak (2016) argues, I have a duty to transfer the \$500 back to my neighbour, whereupon I shall no longer be a beneficiary of the gang’s operations and therefore no longer under any duty of fairness.

Non-voters, however, do not generally fall into any of these categories. First, some citizens abstain out of a lack of capacity, but the vast majority do not. Reasonable regimes of compulsory voting can be expected to make exceptions for those unable to vote. Secondly, where elections are well-structured, the costs of voting are low. As the evidence above indicates, however, the collective benefits can be very substantial. Thirdly, there is nothing unjust about the democratic process itself. Indeed, many philosophers hold that democracy is the sole intrinsically just form of government (e.g. Beitz, 1989; Christiano, 2008; Kolodny, 2014b; Pettit, 2012).

It is undoubtedly the case, however, that democracies sometimes produce unjust results – paradigmatically, distributively unfair allocations of resources. This fact, however, does not threaten the free-riding argument. To see this, we must first distinguish two classes of persons – persons to whom resources are unjustly *under*-allocated by the democratic process, and persons to whom resources are unjustly *over*-allocated by the democratic process.³⁰ There is obviously no question of the duties of the former being undermined in the manner Pasternak describes. Persons to whom resources are unjustly under-allocated, by definition, do not have duties to transfer any of those resources to others.

Persons to whom resources are under-allocated are surely far more numerous than persons to whom resources are over-allocated. Still, I also think that the latter have duties of fairness to vote, the injustice of their distributive shares notwithstanding. Notice that the democratic case differs crucially from the robbery case. My neighbour has a claim on the entirety of the \$500 left for me by the gang, whereas I

²⁹ Though, of course, one might be required to contribute for other reasons.

³⁰ For ease of exposition, I am speaking in terms of the allocation of resources. We could easily add in elements like welfare, liberties, and so on without altering the argument.

have no claim at all. It is for this reason that I am required to transfer the \$500 to my neighbour. The democratic case is more complex. Even citizens to whom resources are over-allocated by the democratic system have claims to at least some proportion of those resources. Access to welfare, social services, public order, healthcare, courts, and so on are owed to *all* citizens by the political community. The duties of citizens to whom resources are over-allocated persist in the face of distributive injustice. Even were they to transfer the resources to which they are not legitimately entitled to others, they would continue to benefit from political participation by members of the interest group(s) to which they belong, insofar as such persons' participation ensures that governments continue to have incentives to provide them resources to which they are legitimately entitled.³¹ The fact that democracies produce unjust results, then, fails to undermine citizens' duties of fairness to vote.³²

Abstention, then, does not fall into any of the categories in which free-riding is generally regarded as not unfair. We can provisionally conclude that abstention is, indeed, unfair. We shall, however, return to the issue below.

Having set out the key considerations upon which the free-riding argument depends, we are now in a position to state the initial version of the argument.

- (F1) It is unfair for sufficiently capable persons to benefit from voting by members of the interest group(s) to which they belong without contributing, by voting, to the political process by which those benefits are produced.
- (F2) It is permissible for the state to subject persons to compulsion where doing so would substantially prevent such unfairness.
- (F3) Compelling sufficiently capable persons who benefit from voting by members of the interest group(s) to which they belong

³¹ Pasternak (2016, pp. 8-9) herself accepts this view with respect to cases of this general sort.

³² One might object that persons to whom the democratic process has unjustly over-allocated resources, by voting, contribute to those injustices by giving politicians incentives to continue allocating an unjust share of resources to the group(s) to which they belong. This would not show that citizens do not have duties of fairness to vote. Only, rather, that there are countervailing considerations which might outweigh that duty in practice. Compulsory voting, fortunately, is likely to have the reverse effect. As we shall argue in section three, compelling citizens to vote is a powerful remedy for socioeconomic bias in turnout which, in turn, undermines elite bias in decision-making.

to vote would deter abstention, substantially preventing such unfairness.

- (FC) Therefore, it is permissible for the state to compel sufficiently capable persons who benefit from voting by members of the interest group(s) to which they belong to vote.³³

The free-riding argument has much intuitive appeal. However, in its present form, the argument is vulnerable to a number of objections. The following section refines the argument in response to these objections.

Before proceeding, however, it is worth noting an important aspect of the argument. A duty of fairness to vote cannot be unconditional. Citizens have such duties only if they belong to at least one group whose interests are advanced by its members' political participation. Given that each of us belongs to many interest groups – racial, ethnic, socioeconomic, geographical and so on – virtually *all* citizens will have such duties. However, it is at least possible that some will not. If no-one from any of the groups to which Juliette belongs chooses to vote, for example, Juliette obviously has no duty of fairness to vote, herself.

Is this a problem for the free-riding argument? Not a serious one. As noted, such persons will be very few in number. There may also be other grounds upon which such persons might permissibly be compelled to vote (see section three). In any case, reasonable regimes of compulsory voting can be expected to recognise exemptions in limited cases. It would be straightforward to extend such exemptions to citizens able to demonstrate that they do not benefit from others' participation in the manner the argument requires.

2.2. Refining the Free-Riding Argument

³³ My objective is to argue that compulsory voting is not unjust. I therefore defend only the weak claim that states may permissibly compel citizens to vote, rather than the strong claim that they are required to do so.

Two principal lines of objection have been raised against the free-riding argument.³⁴ The first holds that duties not to free-ride are not justly enforceable – i.e. that F2 is false. The second holds that abstention is not unfair – i.e. that F1 is false. Let us consider each in turn.

2.2.1. Is the Duty Enforceable?

Jason Brennan (2014, p. 76) holds that the free-riding argument fails because duties of fairness are not coercively enforceable. That is much too strong. Few would deny that fare-evaders and tax-evaders act unfairly, and that the state may justifiably take steps to enforce such persons' duties of fairness. That said, it is true that not *all* duties of fairness are coercively enforceable. If Edith agrees to feed Fran's cat one night, Fran has a duty of fairness to return the favour. However, it would obviously be inappropriate for the state to force Fran to do so. This raises the question: are duties of fairness to *vote* enforceable?

We can make progress, here, by considering what distinguishes our two paradigm cases: Fran, whose duty cannot be enforced, and fare-evaders, whose duties can be enforced. The most obvious difference is that the enforcement of Fran's duty to Edith would carry unacceptable moral costs. Any plausible enforcement mechanism would be highly intrusive. Moreover, individuals' lives and relationships will generally go better if they are required to resolve minor disputes of this kind interpersonally. Such considerations obviously do not arise when compelling citizens to pay their fares on public transport. This, then, suggests that duties of fairness may only be enforced where doing so would not entail unacceptable moral costs. Compulsory voting, surely, does not plausibly jeopardise our privacy, or interpersonal relationships. Opponents of compulsory voting, however, have claimed that compulsory voting does entail a range of other costs. I argue in the following section that none of these claims are plausible. We shall, accordingly, defer discussion of the issue until then.

³⁴ Lever (2010, pp. 913-5) offers a further objection that can be quickly dismissed: the primary victims of abstention are not voters who are exploited by free-riding non-voters, but rather those who *cannot* vote who are deprived of the political support they might have received had non-voters chosen to participate. This does not show that non-voters are not unfair free-riders. Only, rather, that abstention also causes bads of other kinds.

In the meantime, however, the question of moral costs does not settle the matter. Brennan (2014, p. 77) does allow that duties of fairness may be enforced if, and only if, individuals *consent* to the benefits in virtue of which the duty arises. This suggests an important disanalogy between non-voters and fare-evaders. Fare-evaders consent to the benefits of public transport. Non-voters, however, do not generally consent to the benefits of others' political participation. Brennan does not explain why this is so. There is, however, a standard argument from Simmons (1979, pp. 79-100) on this front. Voluntary consent, Simmons claims, requires *reasonable alternatives*. If Elizabeth 'agrees' to give her purse to a gunman who threatens to kill her if she does not, she cannot be said to have *consented* to giving her money away, given the unacceptability of the alternative. Similarly, citizens cannot generally be said to have given consent to the benefits the state provides, given that the only way they can avoid receiving those benefits is by (the unreasonably costly act of) emigration. One might, similarly, hold that non-voters do not consent to the benefits of others' political participation since, presumably, emigration is also the only way in which one can avoid receiving those benefits.

However, I reject the claim that duties of fairness are enforceable only where individuals have given consent. Suppose Jack has recently been in an accident. The 'meals on wheels' service operated by his local council is his only means of getting food. Residents do not need to opt in to the service. Meals are sent automatically to residents known to be unwell. The council charges \$10 a week for the service, which Jack can easily afford. Non-payment is punishable by a fine of \$20. Jack takes the meals but refuses to pay. Jack has no reasonable alternative to accepting the meals. He would starve, otherwise. He does not, therefore, strictly consent. Fining Jack, however, seems totally unproblematic. Intuitively, his *willing acceptance* of the benefits of the service is sufficient to render him liable to proportionate coercion if he refuses to pay.³⁵

I think that the vast majority of non-voters can also be said to willingly accept the benefits of voting by members of the interest group(s) to which they belong. The intuitive core of willing acceptance seems well captured by the following.

³⁵ Rawls (1964) gestures towards a similar view in defence of a duty to obey the law. Importantly, I do not claim that willing acceptance is *necessary* to render duties of fairness enforceable, only that it is *sufficient* (provided enforcement does not entail unacceptable moral costs).

For a beneficiary to have willingly accepted some benefit, they must not have (a) attempted to reject that benefit, or (b) disgorged that benefit, or (c) disgorged something of equivalent value, or (d) preferred that the benefit not be conferred upon them.

Jack's conduct clearly satisfies none of these conditions. Nor are they satisfied by the vast majority of non-voters. Citizens routinely accept the benefits of government-provided public goods, insofar as they rely upon those goods (public order, roads, transfer payments etc...) in daily life. The rate at which governments provide those goods to different interest groups is a function of governments' political incentives. These, in turn, are partially a function of the rate at which different interest groups participate in the political process. In accepting the benefits of government-provided public goods, then, non-voters accept – i.e. fail to reject – the benefits of political participation by members of the interest group(s) to which they belong. Very few non-voters take steps to either disgorge these benefits, or objects of equivalent value (perhaps by donating some suitable sum of money to the treasury). And it would be simply bizarre if non-voters preferred *en masse* that these benefits were not conferred upon them at all. Very few, presumably, would prefer to belong to groups to whom governments were *less* responsive.³⁶

In the absence of some further argument, then, I conclude that duties of fairness to vote are coercively enforceable. Engaging with this line of objection, however, has proven fruitful. We have identified several revisions to be made to the argument. We must substitute F2, F3 and FC for F2*, F3* and FC*, and add F4, as follows.

(F2*) Where persons have duties of fairness in virtue of the receipt of benefits, and where the benefits in question were willingly accepted by those persons, it is permissible for the state to subject those persons to compulsion where doing so would substantially prevent those persons from violating those duties

³⁶ Outcomes for groups to whom governments are under-responsive are typically worse than those of other citizens. Consider, for instance, the plight of persistent minorities such as Native Americans (c.f. Rights, 2003). See also the discussion of the cognitively disabled in chapter five.

of fairness, provided there are no unacceptable moral costs associated with doing so.

- (F3*) Compelling sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong to vote would substantially prevent such persons from violating their duties of fairness to vote.
- (F4) There are no unacceptable moral costs associated with compelling sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong to vote.
- (FC*) Therefore, it is permissible for the state to compel sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong to vote.

This narrows the scope of the argument. Some citizens – certain radical anarchists, perhaps – do not willingly accept the benefits of others’ political participation. The free-riding argument cannot justify compelling such persons to vote. This need not worry us. For the reasons outlined above, such persons are surely few and far between. They might potentially be permissibly compelled to vote on other grounds. And, if not, such persons might simply be exempted from the requirement to vote.

2.2.2. Is Abstention Unfair?

A more foundational line of objection challenges the claim that abstention is unfair. Three separate arguments have been advanced to this end. The first two may be dealt with relatively quickly. The third is more complex.

First, Geoffrey Brennan and Loren Lomasky (2000, pp. 75-9), and Christopher Wellman (2005, pp. 59-60) have argued that abstention is not unfair because it does not impose costs upon others. On the contrary, abstention *benefits* citizens who choose to vote. Brennan and Lomasky point out that shrinking the total number of voters increases each voter’s probability of casting a decisive ballot and, in turn, the expected value of voting. Wellman argues, similarly, that shrinking the total number

of voters increases the amount of influence each voter can be said to exercise over the outcome.

Both versions of the argument, then, rely upon the claim that unfair free-riding necessarily involves imposing costs upon others (or, at least, failing to benefit others). That view, however, should be rejected. Construing unfair free-riding in this way leaves us unable to account for many paradigmatic cases. Suppose, for instance, that Eloise fare-evades on a public bus with plenty of empty seats. Eloise surely acts unfairly. However, her actions are *neutral* with respect to others' welfare. She isn't preventing anyone from using the bus. Her fellow passengers would be no better off had she paid her fare to the conductor. Nor do her actions plausibly affect the wider community. A bus fare is much too trivial to make any difference to the government's capacity to intervene upon citizens' wellbeing, for instance. It is for this reason that, in section one, we defined free-riding as a failure to *contribute* to systems for the production of public goods from which one benefits. The case of fare-evasion illustrates that such failures do not necessarily involve the imposition of costs, or failures to confer benefits, upon others. The fact that non-voters benefit voters in the ways described is neither here nor there with respect to the unfairness of abstention.³⁷ Both versions of this challenge simply misfire.

Second, Jason Brennan (2014, pp. 75-82) appeals to Robert Nozick's (1974, pp. 90-6) argument against the claim that the receipt of benefits is sufficient to ground duties to contribute to the system by which they are produced. If Anthony's neighbours set up a public-address system that plays music he occasionally enjoys, for example, he is surely not thereby obliged to take on costs to help maintain the system. The mere fact that non-voters benefit from others' participation, then, does not show that non-voters have duties to vote.

All Nozick's argument shows, however, is that persons who benefit from public goods do not *necessarily* have duties to contribute to the production of those goods. It does not show that beneficiaries *never* have such duties. Jack's acceptance of the benefits of the meals on wheels service, above, clearly gives rise to a duty to

³⁷ Perhaps we might reinterpret these authors as claiming that the unfairness of abstention is outweighed by benefits to voters. This seems very unpromising. Each citizen's abstention will have only a minuscule impact upon others' chances of decisiveness and shares of political influence.

contribute. Similar cases abound. If one's neighbours were digging a well to provide safe drinking water to the street where none was otherwise available, or else eliminating wild animals that threaten human life, for example, there is a strong intuition that fairness would require one to contribute to those efforts.

As Cullity (2008, pp. 13-4) and Klosko (1987, pp. 246-53), among others, point out, what appears to make the intuitive difference in these cases is the significance of the benefits in question. The ability to listen to music chosen by one's neighbours is a trivial benefit. Food, water, and personal safety are decidedly non-trivial. Nor, importantly, are the benefits of others' political participation trivial. Consider the evidence above linking participation rates to the provision of important goods like social services and welfare. Responding to this criticism, then, simply requires us to make a slight modification to the argument, substituting F1 for F1*.

(F1*) It is unfair for sufficiently capable persons to benefit non-trivially from voting by members of the interest group(s) to which they belong without contributing, by voting, to the political process by which those benefits are produced.

A final objection, perhaps the most important, is advanced by Jason Brennan (2014, pp. 79-82). He argues that taking the free-riding argument seriously leads to an unacceptable proliferation of moral duties. He begins by distinguishing the following two views of the moral requirement not to free-ride (Brennan, 2014, p. 79).

- (1) If you receive a good of type *P*, then you must provide goods of type *P* back in return.
- (2) If you receive a good of type *P*, then you must provide sufficiently valuable goods of *any* type back in return.

For abstention to generally amount to free-riding, we must be required to reciprocate for the benefits of voting by voting, ourselves. Under (2), citizens would be able to make up for failures to vote in other ways – paying taxes, raising children, making art, and so on. Moreover, Brennan (2014, p. 81) claims, since almost all of us

make *some* net positive contribution to society over our lifetimes, non-voters, under (2), would almost never amount to free-riders. The free-riding argument, then, must rely upon (1). (1), however, entails implausible conclusions. Each of us is constantly in receipt of a vast range of goods produced by others, given the division of labour characteristic of modern societies. Under (1), then, citizens would be subject to a plethora of requirements to provide a vast range of goods to a vast range of people. This radically misdescribes our moral situation. We simply are not subject to such duties. We ought, then, reject (1) in favour of (2). As we have already pointed out, however, (2) undermines the claim that non-voters are free-riders.

Brennan, however, presents us with a false choice. Both (1) and (2) should be rejected. They are both too broad, making unrestricted claims as to what individuals are required to do where they receive goods of any kind. As a conceptual matter, however, free-riding occurs only where individuals benefit in a very particular way – i.e. from others’ production of *public goods*. As we have just seen, duties to contribute to the production of public goods arise only where we benefit non-trivially from those goods. And, as we have also just seen, our duties not to free-ride do not necessarily require us to provide *goods* to others, but rather to make *appropriate contributions* to systems for the production of public goods from which we benefit. The real choice, then, is between the following.

- (1’) If you benefit non-trivially from some public good *P*, then you must make appropriate contribution to the system by which that public good is produced.
- (2’) If you benefit non-trivially from some public good *P*, then you must make appropriate contribution to some system by which some public good is produced.

Insofar as the free-riding argument relies upon the claim that citizens who benefit from others’ contributions to the political process have duties to contribute to the political process themselves, the free-riding argument must depend upon (1’). Whether we should accept (1’) or (2’) is a matter of which best captures our

intuitions. In this respect, (1') has a clear advantage.³⁸ We do not generally think that persons who have made even very substantial contributions to some system for the production of public goods are thereby 'off the hook' with respect to others. Georgina's failure to buy a ticket on a public bus seems no more or less unfair if she is an average citizen or a self-made millionaire who employs hundreds of people and pays a great deal in tax. Either way, Georgina benefits from the public transport system, and ought to make appropriate contribution to that system.

Opponents are likely to protest that (1') is vulnerable to its own proliferation objection. Notice, however, that (1') is far narrower than (1). (1') only requires persons to contribute to the production of public goods from which they benefit non-trivially. Many public goods provide us with trivial benefits, only. My neighbour's well-kept garden might be a public good, insofar as anyone can take pleasure in looking at it. But, given the triviality of this benefit, (1') gives rise to no requirement to contribute to its production. Many of the other goods from which we benefit are not public goods, at all. Most goods traded on the economic market, for example, exhibit neither jointness in consumption, nor jointness in supply.

Of course, there are significant public goods from which we derive non-trivial benefits – public order, clean air, public education, public health, and so on – to which we are obliged to contribute under (1'). I deny, however, that this is in any way problematic. In the first place, citizens are able to discharge almost all their duties to contribute to such goods by simply paying tax. Private actors usually do not produce such goods, given the famously difficult co-ordination problems which attend private efforts to do so (Olson, 1965). Co-ordinating the production of such goods is amongst the most important functions of the state. Governments act as a 'middle-man', collecting each person's contributions via taxation, and distributing them to the systems by which those goods are produced. Some significant public goods, of course, are provided by non-government organisations – charities and churches for example. But even in these cases, citizens generally contribute in virtue of the fact that such organisations are generally untaxed. Citizens are therefore

³⁸ Philip Pettit has pointed out to me that (2') would have the additional disadvantage of being virtually impossible to institutionalise and enforce.

required to pay higher rates of taxation to fund other public goods, in virtue of the forgone revenue – effectively subsidising non-government operations.

In the small number of remaining cases wherein we derive non-trivial benefits from public goods that are neither state-provided nor citizen-supported, I think we should accept that citizens have duties to contribute. Georgina simply does seem to have a duty of fairness to pay the bus fare, no matter the magnitude of her contributions in other domains. Alternatively, consider again the case in which one's neighbours are digging a well to provide drinking water to the street. One simply *does* seem to have duties to contribute to their efforts, no matter the magnitude of one's other contributions.³⁹ (1'), perhaps, will require many of us to contribute more, and in more ways, than we do at present.⁴⁰ In my view, we should *embrace* that conclusion. Many of us do free-ride upon others. We are rightly criticisable as such.

Brennan's critique, however, does contain a grain of truth. (1') requires citizens to make appropriate contributions to systems for the production of public goods from which they benefit. Yet *appropriate* contributions are not necessarily *identical* contributions. I hardly treat my neighbours unfairly if I contribute to the construction of the well by making the bricks for the top of the well while they dig the hole. In the political case, citizens have duties of fairness to contribute to the political process by which members of the interest group(s) to which they belong produce the good of governmental responsiveness. But citizens might discharge such duties by means *other* than voting. If Irene fails to vote because she is too busy ferrying dozens of members of her interest group who would otherwise have abstained to the polls, for example, she can hardly be accused of free-riding.

This is hardly a serious problem for the argument. Presumably, very few citizens fail to vote in order to make political contributions of other kinds. Such persons'

³⁹ Someone might object by appeal to a counterexample of the following sort. Suppose that, while the neighbours dug the well, you cleared away a large pile of garbage from the street. It hardly seems fair to describe you as a free-rider, though you fail to contribute to the digging of the well. All this shows, however, is that we need to be careful in how we *individuate* public goods. Both you and your neighbours are contributing to the same public good – the liveability of the street – in different ways. I thank Philip Pettit for helpful advice on this point.

⁴⁰ Notice also that (2') would be no less demanding than (1'). (2') does not give rise to less demanding duties. It merely affords persons greater latitude with the respect to how they can fulfil those duties.

compulsion might be legitimated on other grounds. And, if such grounds are unavailable, further exemptions might easily be introduced. Still, the argument must be modified slightly to accommodate such persons. F1*, F3*, F4 and FC* must be substituted for F1**, F3**, F4* and FC**, as follows. Since these are the final refinements, we can now state the final version of the argument in full.

- (F1**) It is unfair for sufficiently capable persons to benefit non-trivially from voting by members of the interest group(s) to which they belong without either voting, or making some equivalent contribution to the political process by which those benefits are produced.
- (F2*) Where persons have duties of fairness in virtue of the receipt of benefits, and where the benefits in question were willingly accepted by those persons, it is permissible for the state to subject those persons to compulsion where doing so would substantially prevent those persons from violating those duties of fairness, provided there are no unacceptable moral costs associated with doing so.
- (F3**) Compelling sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong, without making some equivalent contribution to the political process by which those benefits are produced, to vote would substantially prevent such persons from violating their duties of fairness to vote.
- (F4*) There are no unacceptable moral costs associated with compelling sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong, without making some equivalent contribution to the political process by which those benefits are produced, to vote.
- (FC**) Therefore, it is permissible for the state to compel sufficiently capable persons who willingly accept the benefits of voting by members of the interest group(s) to which they belong, without

making some equivalent contribution to the political process by which those benefits are produced, to vote.

The refinement of the argument is complete. Its defence, however, is not. The argument relies crucially upon the claim that compulsory voting does not involve unacceptable moral costs (i.e. F4*). As noted above, however, this is controversial. Critics often claim that compulsory voting imposes unacceptable moral costs. A satisfactory defence of the free-riding argument, then, must respond to these claims.

2.3. The Purported Moral Costs of Compulsory Voting

Opponents of compulsory voting have advanced three lines of argument to the effect that compulsory voting entails unacceptable moral costs.⁴¹ These hold, respectively, that compulsory voting leads to lower-quality decisions, undermines the valuable political effects of abstention, and violates a purported right not to vote. As we shall see, these objections all rely upon implausible normative premises, mischaracterisations of compulsory voting, or empirical claims that are unsupported by the relevant social science.

2.3.1. Lower-Quality Decisions

The most popular line of objection to compulsory voting holds that compelling citizens to vote leads to lower-quality political decisions.⁴² Empirical evidence suggests that habitual non-voters are likely to be less informed than regular voters (Citrin et al., 2003). Compulsory voting compels persons who would otherwise habitually abstain to vote. The median voter, then, is less well informed under compulsory voting. Lower-quality political decisions, critics claim, are the inevitable result.

However, evidence that compulsory voting produces lower-quality decisions, in practice, is thin on the ground. There are at least two good reasons to doubt whether such evidence is likely to be forthcoming.

⁴¹ For other important responses to these and other objections, see Hill (2014, ch.s 7-8).

⁴² See, for example, Brennan (2014, ch. 4), Caplan (2006, pp. 156-8), and Ciccone (2002, p. 348-50).

First, Lijphart (1997, p. 10) conjectures that “...mandatory voting may serve as an incentive to become better informed,” mitigating these concerns. Some studies (e.g. Birch, 2009b, p. 67; Loewen et al., 2008) find no evidence of such an effect. The majority of studies, however, lend support to Lijphart’s conjecture. Shineman (Forthcoming), for example, surveyed two groups of around 100 voters prior to a San Francisco municipal election. One group was issued with a \$25 gift card, to be activated only if they voted. Post-election surveys showed that the group who stood to lose \$25 by not voting gathered substantially more information than the control. In a cross-national study of 37 countries, Sheppard (2015) finds that where compulsory voting is effectively enforced, controlling for other factors, citizens have greater average levels of political knowledge, and there is a smaller knowledge gap between well-educated and under-educated citizens. Carreras (2016) finds, in a study of Latin American nations, that compulsory voting increases overall levels of political discussion, the proportion of individuals with party affiliations, and attention to political news among the poorly educated. In a cross-national study of 12 European nations, Gordon and Segura (1997, pp. 137-41) and Berggren (2001) found that compulsory voting has a positive effect on citizens’ ability to locate political parties on the ideological spectrum. Finally, in a study comparing Austrian provinces in which voting is compulsory to those in which it is voluntary, Shineman (2012) finds that compulsory voting has a significant, positive impact upon citizens’ levels of political knowledge. It appears, then, that compulsory voting mitigates voter ignorance, and thus the risk of lower-quality decisions.

Second, even if future research tells against Lijphart’s conjecture, this may not much matter. A substantial body of evidence indicates that uninformed voters are often able to emulate better-informed voters by employing informational shortcuts (Boudreau, 2009; Lupia and McCubbins, 1998). Merely knowing a candidate’s partisan affiliation, race, or gender is often sufficient for relatively uninformed citizens to vote as they would have done had they been better informed. Informational shortcuts are no panacea. They can go wrong in a variety of ways. Still, they plausibly allow relatively uninformed persons – including habitual non-voters – to vote as though they were well informed in (at the very least) a wide range of cases, again mitigating the risks of lower-quality decisions.

On the other hand, we must weigh the (rather speculative) risks of lower-quality decisions against the chance of higher-quality decisions. To this end, other proponents of compulsory voting have mounted a powerful case to suggest that compulsory voting is likely to produce more egalitarian outcomes (Birch, 2009a, pp. 23-4; Engelen, 2007, p. 25; Hill, 2014, ch. 6; Lijphart, 1997). It is well-accepted that voluntary voting, where large numbers of individuals abstain, leads to heavy socioeconomic bias in turnout. Disadvantaged social groups – e.g. young people, poor people, the unemployed, the poorly educated, the homeless, indigenous people, prisoners, persons with poor language skills – are substantially less likely to vote than others (Hill, 2014, p. 132). This, proponents of the egalitarian argument claim, contributes to elite bias in political decision-making. As discussed in section one, evidence indicates that politicians are substantially more attentive to the interests of groups who vote in greater numbers. Compelling citizens to vote substantially addresses socioeconomic bias in turnout (Singh, 2015). We should expect compulsory voting, then, to partially mitigate elite bias in political decision-making.

A growing body of empirical evidence lends support to the egalitarian argument. In a cross-national study of 41 democracies in 1991, O'Toole and Stroble (1995) found that compulsory voting is associated with higher levels of government spending on services upon which the worse-off are more typically reliant (e.g. health, and housing). In a cross-national study of 91 countries between 1960 and 2000, Chong and Olivera (2008) show that compulsory voting – when effectively enforced – leads to Gini coefficients 3.7 points lower on average.⁴³ Birch (2009b, p. 131) finds similar results in cross-national analyses of Western Europe and Latin America. In a study of direct referenda in Swiss Cantons over the period 1908-1970, Bechtel et al. (2016, p. 764) find that the vote share for redistributive policy measures was 11% higher on average in Cantons that enforced compulsory voting. Carey and Horiuchi (2017, pp. 125-35) find that Venezuela's abolition of compulsory voting in 1993 sharply depressed turnout (from 80% in 1988 to 54% in 1993), and lead to increased Gini coefficients. Finally, Fowler (2013, pp. 173-7) finds that the introduction of compulsory voting in Australia in 1924 lead to increased federal spending on

⁴³ Lower Gini coefficients imply a more equal distribution of income.

pensions, more strongly favoured by working-class voters at that time.⁴⁴ This evidence powerfully suggests, then, that compulsory voting leads to more egalitarian outcomes – and, thus, better outcomes (at least with respect to equality).⁴⁵

Perhaps, however, it is not open to proponents of the free-riding argument to appeal to such benefits. Brennan (2014, p. 74) and Lever (2009, p. 69; 2010, p. 913) have objected that the free-riding and egalitarian arguments are inconsistent. According to Brennan, the free-riding argument depends upon the claim that voters confer benefits upon non-voters, whereas the egalitarian argument depends upon the claim that voters harm non-voters by causing governments to over-allocate resources to the former at the latter's expense. According to Lever, the free-riding argument depends upon the claim that non-voters self-interestedly exploit voters, whereas the egalitarian argument depends upon the claim that non-voters fail to act in their self-interest, and must be compelled to do so.

Brennan, however, mischaracterises both arguments. The egalitarian argument relies only upon the claim that members of interest groups that under-participate are harmed by the relative over-participation of *other* interest groups. My free-riding argument depends only upon the claim that non-voters are benefited by members of *their own* interest group(s) who choose to vote. These claims are obviously consistent.

Lever, by contrast, conflates two distinct questions: whether non-voters act in a self-interested manner *as individuals*, and whether non-voters' *collective* abstention promotes their interests. The free-riding argument relies upon an affirmative answer to the former, but is neutral with respect to the latter. The egalitarian

⁴⁴ Brennan (2014, pp. 39-42) attempts to explain these results away, arguing that countries with egalitarian political cultures are likely to support both reducing inequality, and compulsory voting. Egalitarian outcomes and compulsory voting, therefore, have a common cause. We should reject this hypothesis for three reasons. First, Brennan offers no evidence in its favour. Second, there is substantial evidence that higher turnout overall (and thus higher turnout among the worse-off) promotes more egalitarian outcomes, *with or without* compulsory voting (c.f. Avery, 2015; Fumagalli and Narciso, 2012; Mueller and Stratmann, 2003). Third, several of these studies – Bechtel et al. (2016), Carey and Horiuchi (2017), and Fowler (2013) – are single-case studies, demonstrating that compulsory voting has an equalising effect internal to particular political cultures.

⁴⁵ As Goodin (1995, p. 23) points out, the law of diminishing marginal utility, suggests that more equal distributions of resources will also tend to lead to higher levels of wellbeing overall.

argument relies upon a negative answer to the latter, but is neutral with respect to the former. This, too, is perfectly consistent. It is overwhelmingly plausible that individually self-interested conduct *causes* collective abstention, and its attendant harms. Individual voters know, in all real-world elections, that they can neither decide political outcomes, nor probabilify political outcomes to any non-trivial degree (Brennan and Lomasky, 1993, ch. 4). As such, it is in each individual voter's rational self-interest to abstain – even if *mass* abstention by the interest group(s) to which they belong will lead to worse results, overall, than collective participation. There is no inconsistency, then, between the claims that abstention is individually self-interested, and collectively harmful for groups that under-participate. There is, as such, no inconsistency between the free-riding and egalitarian arguments.

All this in hand, we can confidently reject this first line of objection. The risks of lower-quality decisions under compulsory voting are highly speculative. The benefits, on the other hand, are demonstrable – and perfectly available to proponents of the free-riding argument.

2.3.2. Valuable Political Effects

Several authors have argued that abstention has valuable political effects that would be lost under compulsory voting. First, Swenson (2007, pp. 540-1) appeals to Downs' (1957, p. 119) observation that more extreme supporters of political parties can deter those parties from moving towards the median by threatening to abstain. Citizens would be deprived of this ability under compulsory voting. It is unclear whether this would be such a loss. If the median voter is more reasonable than the extremes, then it is surely *better* if parties move towards that position. Moreover, as pointed out earlier, compulsory voting does not deprive citizens of the ability to abstain. Citizens can leave the polling station once their attendance has been registered, without voting.

Secondly, Ciccone (2002, p. 348) argues that abstention prevents unaffected and/or indifferent voters from distorting political outcomes. The potential harms are twofold. First, voting by unaffected and/or indifferent citizens may lead to bad outcomes from the perspective of affected and/or non-indifferent citizens. Childless

parents voting in school board elections, for example, may select candidates harmful to the school system. Second, if the number of indifferent and/or unaffected voters is greater than the number of affected and/or non-indifferent voters, politicians will have incentives to appeal to the former, at the expense of the latter. Indifferent and/or unaffected voters abstain where voting is optional. Not so, obviously, under compulsory voting.

I deny, however, that unaffected or indifferent voters pose such difficulties. Unaffected voters simply do not exist in large-scale political decisions. Political decisions characteristically concern bundles of policies, at least some of which are likely to impact all members of the relevant community. There are perhaps some, limited cases where groups who cannot possibly be affected by some decision can be clearly identified (e.g. school board elections). In those cases, perhaps, compulsory voting is inappropriate. It obviously does not follow, however, that compulsory voting is inappropriate across the board.

Genuinely indifferent voters can be expected to vote randomly, distributing their votes evenly over the options on the agenda, and thereby making virtually no difference to the probabilities of the various outcomes emerging as the social choice (Goodin, 2007, pp. 58-9). 'Indifferent' voters to whom politicians successfully appeal are, *ex hypothesi*, no longer truly indifferent. In that case, there is presumably nothing problematic about such voters exercising influence over political outcomes, alongside other voters.

Finally, Blomberg (1995, pp. 1024-5) holds that widespread abstention is an efficient means of encouraging qualified individuals to run for office. Widespread abstention implies the existence of a large constituency of voters who might be mobilised by an exceptional candidate. Blomberg offers no evidence in support of this claim, and I can find none. There are good reasons to be sceptical that any such evidence is likely to be forthcoming. Abstention in previous elections is a strong predictor of abstention in future elections (Fowler, 2006; Plutzer, 2002). Candidates who seek to mobilise large numbers of habitual non-voters can therefore expect to meet with little success. This probably deters most potential candidates from trying. Candidates who *do* successfully mobilise large numbers of habitual non-voters may

not be of particularly high quality. And, even if they are, there is no guarantee that they will win. They may even cause harm, splitting the vote with the next-most qualified candidate, causing a still worse candidate to prevail.

These costs, then, are at worst highly speculative – and are, as such, also liable to outweighed by the gains of compulsory voting outlined in the previous section.

2.3.3. The Right Not to Vote

Our final line of objection holds that compulsory voting violates a right not to vote. Some (e.g. Ciccone, 2002, pp. 347-8; Katz, 1997, p. 244) think the right *not* to vote is logically entailed by the right *to* vote. That is much too quick. As many have pointed out, rights do not necessarily entail their inverse. A child's right to an education, for example, does not imply a right not to be educated. Proponents of this objection, then, must offer a positive argument for the right not to vote. There is no way of showing that no such argument could possibly be offered. We can, however, show that no existing argument is convincing.

Two such arguments may be dismissed quickly. First, Blomberg (1995, pp. 1019-20, 1022) argues that citizens have a right against being compelled to vote on the grounds that abstention can be *rational*. This proves far too much. The whole enterprise of the criminal law, after all, largely functions by deterring citizens from actions – e.g. theft – it might otherwise be rational to perform. Second, Ciccone (2002, pp. 349-50) argues that citizens have a right against being compelled to vote on the grounds that voting is supererogatory. I, however, have argued that the vast majority of citizens have *duties* of fairness to vote (i.e. that voting is not supererogatory for the vast majority of citizens), and that the remainder can simply be exempted.

Others hold that abstention constitutes a valuable expressive opportunity. Proponents of this argument have appealed to two distinct opportunities in this respect: the ability to express dissatisfaction with, or indifference between, the options on the ballot (Ciccone, 2002, pp. 347-8; Swenson, 2007, p. 542), and the ability to express dissent from the democratic system as a whole (Blomberg, 1995,

p. 1023; Lever, 2010, p. 911; Swenson, 2007, pp. 542-3). Let us grant, *arguendo*, that citizens have rights to express attitudes of both these kinds, and that abstention is one means of doing so. Still, it doesn't follow that compulsory voting is rights-violating.

This is clearest with respect to the right to express indifference between, or dissatisfaction with, the options on the ballot, by abstaining. Compulsory voting does not deprive citizens of the opportunity to abstain – and therefore does not deprive citizens of such expressive opportunities.

Compulsory voting does, however, compel citizens to attend a polling station. That, it might be argued, is a form of political participation, even if citizens go on to abstain. On that basis, one might claim that compulsory voting forces citizens who might otherwise have wished to dissent to express support for the democratic system.⁴⁶ That is implausible. Citizens who attend polling stations merely because they are compelled to cannot reasonably be seen to express support for democracy, any more than non-believers forced to attend church can be said to express religious belief. The sheer fact of coercion blocks any such inference. More moderately, one might claim that mandatory attendance merely deprives citizens of the opportunity to express dissent. However, compulsory voting would leave open many expressive opportunities of equivalent value – posting on Facebook, writing letters to newspaper editors, and so on. Indeed, compulsory voting plausibly *amplifies* the expressive power of refusing to attend by converting the act of abstention into a costly signal (since citizens must typically pay a fine if they wish to express their dissent from the democratic system by abstaining). This line of argument, then, is also unconvincing.

Finally, Lever (2008, p. 62; 2010, pp. 910-12) argues that compulsory voting violates liberal neutrality. Reasonable disagreement abounds over the value of political participation in general, and voting in particular. Compelling individuals to vote, therefore, violates citizens' rights against having reasonably contested conceptions of the good imposed upon them. This, however, misunderstands the requirements of liberal neutrality. Compulsory voting certainly has effects that adherents of views

⁴⁶ Lever (2010, p. 911) gestures towards this view.

on which voting is not a valuable form of political participation will find unwelcome. Yet liberal neutrality is not ultimately concerned ensuring neutrality with respect to the *effects* of different social policies between adherents of various conceptions of the good. If neutrality requires anything at all, it surely requires religious tolerance, which disadvantages adherents of intolerant religions, for example. Rather, liberal neutrality requires that social policies not be justified solely by appeal to reasonably contested conceptions of the good (Rawls, 1988, pp. 260-5). Proponents of compulsory voting do not typically appeal to such conceptions. Rather, they appeal to values all citizens might reasonably be expected to share (e.g. equality, and fairness).⁴⁷ It is hard to see, then, quite how compulsory voting is supposed to be objectionable on this score.

We cannot rule out the possibility that some more compelling argument for a right not to vote is available. Yet this seems doubtful. Compulsory voting is neither particularly demanding, nor particularly coercive. Elections come around very occasionally, and punishments under defensible regimes of compulsory voting are light. If laws compelling citizens to pay tax or obey the speed limit are not rights-violating, it seems unlikely that compulsory voting is rights-violating either. Moreover, even if there were a plausible argument for a right not to vote, it would still need to be shown that compulsory voting – wherein citizens retain their ability to abstain – would violate that right. That is going to be, to say the least, a tall order. In the absence of such an argument, we can safely dismiss this final line of objection, too.

No prominent attempt to demonstrate that compulsory voting would entail unacceptable moral costs succeeds. That is of independent theoretical interest. But, more importantly for our purposes, it completes the final step in our defence of the free-riding argument. The free-riding argument, as such, appears to be sound.

2.4. Conclusion

⁴⁷ See also Engelen (2009, p. 220).

I began this chapter by setting out the problem of declining turnout, and pointing to compulsory voting as the most effective remedy. Compulsion, however, demands justification. I argued that non-voters, in the vast majority of cases, are free-riding upon members of the interest group or groups to which they belong who choose to vote. They may, as such, be legitimately compelled to vote. Typical objections to the free-riding argument, I argued, ought to prompt us to *refine* the argument, rather than reject it outright. We also considered a range of prominent objections to compulsory voting as such, each of which purports to show that compulsory voting is unacceptably costly from a moral point of view. These objections, I argued, are uniformly reliant upon implausible normative or empirical premises, or mischaracterisations of compulsory voting. States, I conclude, may permissibly compel citizens to vote.

3. Vote Buying and Respect for Autonomy

On July 9, 1996, Don McCranie was elected Commissioner of Dodge County, Georgia. Sometime later, his opponent Doyce Mullis petitioned the Dodge County Superior Court, seeking to have the result overturned. The court, citing numerous irregularities, agreed with Mullis and voided the election, a verdict later upheld by the Georgia Supreme Court. A Federal-State investigation subsequently revealed electoral fraud on both sides, including extensive vote buying campaigns. So brazen were both sides' operatives that, at one stage, tables were set up at opposite ends of a courthouse where pre-polling was underway, with Mullis and McCranie's campaign operatives openly bidding for votes in the manner of a flea market.⁴⁸

Such cases arouse strong intuitions. Vote buying seems morally wrong. Its criminalisation seems obviously justified. Almost every democratic theorist that has considered the issue has sought to vindicate these judgements.⁴⁹ Yet, as recent literature as shown, the matter is complex. A number of recent pieces have offered sophisticated arguments in favour of vote buying (c.f. Brennan, 2011a, ch. 6; Brennan and Jaworski, 2016, ch. 19; Freiman, 2014; Taylor, Forthcoming-b). Moreover, as Lippert-Rasmussen (2011) has shown, differentiating vote buying from other practices, from a moral point of view, is not straightforward. For example, it is (generally) permissible for political candidates to seek voters' support by promising to promote their material interests, conditional upon their being *elected*. What is so very different about candidates seeking to secure voters' support by promising to promote their material interests, conditional upon them *voting* for the candidate in question?

This chapter proposes a novel account of the wrongness of vote buying. Vote buying, I shall argue, involves a peculiar kind of disrespect for persons as autonomous agents. Before proceeding, however, it would be as well to get clear over the nature of vote buying. For A to purchase B's vote is for A and B to enter a contractual relationship wherein A agrees to transfer some benefit or other to B, conditional

⁴⁸ The full facts are outlined in *United States v. McCranie*, 169 F.3d 723, 726 (11th Cir. 1999).

⁴⁹ See Archer and Wilson (2014), Epstein (1985), Hasen (2000), Karlan (1994), Kochin and Kochin (1998), Rose-Ackerman (1985), Satz (2010), Stokes (2007), Sunstein (1994), and Tobin (1970).

upon B disposing of their ballot as A directs. Votes can be bought and sold in a variety of contexts – public elections and referenda, meetings of clubs, political parties, shareholders and the like, or even among elected officials in legislatures. Buyers might be candidates for public office (or their campaign officials), ordinary citizens, or foreign nationals. The benefits in question will generally be monetary – in the Dodge County case, for example, votes were bought for between \$20 and \$40 – but need not be. In the 19th century, political parties in the US and UK regularly bought votes with food, alcohol, and healthcare, for example (Stokes et al., 2013, ch. 8). Buyers might direct sellers to dispose of their ballots in any number of ways – to vote for the buyer’s preferred candidate, to vote for whomever the seller wants, to burn their ballot paper, and so on.

Vote buying, then, is multifarious. To keep the discussion that follows manageable, I propose to delimit our focus in three ways. First, I will focus upon vote buying in elections and referenda, remaining neutral on the morality of vote buying in other contexts.

Second, I shall concentrate only upon the two most common forms of vote buying. ‘Direct’ vote buying involves buyers paying sellers to hand over their ballot papers for the buyer to fill in and cast as they wish. ‘Indirect’ vote buying involves buyers paying sellers to personally fill out and cast their ballots for the buyer’s preferred candidates and/or policies. The two are importantly distinct. Direct vote buying involves a transfer of property rights over the seller’s ballot. Indirect vote buying is more akin to a ‘paid performance’ (Brennan, 2011a, p. 137). Just as paying a guitarist to perform at a party does not involve a transfer of property rights over the performer’s guitar, indirect vote buying does not involve buyers asserting property rights over the seller’s ballot. On all other forms of vote buying – e.g. paying people not to vote, paying people to vote for whomever they like – I remain neutral.

Finally, I will also remain neutral on the matter of vote *selling*. Often, the reasons in virtue of which it is wrong to purchase some object or service do not explain the wrongness of selling that same object or service. Many of the considerations which explain the wrongness of slave-buying (e.g. the wrongness of subjugating others’ wills to one’s own) do not explain the wrongness of selling oneself into slavery.

Similarly, then, an account of the wrongness of vote buying need not explain the wrongness of vote selling. We shall, as such, set the issue aside.

This in hand, we can proceed to the arguments. We begin with recent arguments in favour of vote buying that have appealed to the supposed instrumental benefits of the practice. Such arguments, I show, are generally unpersuasive. Vote buying would likely be bad from an instrumental point of view. Yet, given the multiplicity of contexts in which vote buying might be introduced, and the various ways in which vote markets might be regulated, instrumental considerations do not tell decisively against vote buying. We must, then, consider the non-instrumental features of vote buying. Several such accounts – appeals to exploitation, effective participation, and political equality – are on offer. I show that each of these accounts, however, is crucially incomplete. Drawing lessons from the failure of these accounts, I defend the view that vote buying is wrong insofar as it expresses an objectionable failure of respect for persons as autonomous agents. Bans on vote buying, I conclude, are justified.

3.1. The Instrumental Case for Vote Buying

The two principal arguments in favour of vote buying are both instrumental in character.⁵⁰ First, the appeal to exchange.⁵¹ Free exchanges of goods generally promote the welfare of all parties to those exchanges. Gerald will exchange his apples for Susan's oranges if and only if he values her oranges more than he values his apples. *Mutatis mutandis* for Susan. A free exchange of apples and oranges between Gerald and Susan, then, ought to promote both parties' welfare. Freiman (2014, p. 761), among others, argues that the same logic applies to votes;⁵²

I'll sell my vote for n dollars only if I value n dollars more than my vote,
and the buyer will buy my vote for n dollars only if she values my vote

⁵⁰ One argument I do not address is Freiman's (2014, pp. 762-4) appeal to voter liberty. Voters, Freiman claims, have the moral right to cast their ballots as they choose, free from interference by others. This extends to a right to cast one's ballot as others direct, for money. This argument has been powerfully criticised by Taylor (Forthcoming-a). Moreover, it would at best justify a right to *sell* one's vote, rather than a right to *buy* others' votes, the subject under discussion, here.

⁵¹ See Taylor (Forthcoming-b, pp. 4-8) for a critique of this argument.

⁵² See also Buchanan and Tullock (1962, pp. 270-81), Copp (2000, p. 87), Taylor (2016, pp. 315-6), and Tobin (1970, p. 269).

more than n dollars. All things equal, vote markets leave both buyers and sellers better off.

The second argument appeals to intensity of preference.⁵³ Suppose, in a group of 10 001 voters, 5 001 slightly prefer candidate A to candidate B, whereas 5000 strongly prefer B to A. Debatably, B is a better social choice, given the relative intensity of citizens' preferences. Standard voting methods, however, are insensitive to intensities of preference, and would result in A being selected as the social choice. Were vote buying permitted, however, strong B-supporters could purchase additional votes from weak A-supporters, ensuring B's victory. Vote buying, then, is one means by which democratic decision-making could be made sensitive to intensities of preference.

Both arguments face serious difficulties. First, there will often be a dearth of buyers. Suppose, that, of 10 001 voters, 5501 prefer C, and 4500 prefer D. To bring D about, D-supporters must collectively purchase 501 votes, and sell none. Notice, however, that the benefits of D's victory are non-excludable. All D-supporters benefit, regardless of whether they 'contribute' by purchasing additional votes. The benefits are also non-scalar. It is no better for D-supporters that D prevail by a wide margin than a narrow margin. It is therefore rational for a D-supporter to contribute if and only if (1) the benefits of D's victory outweigh the cost of contributing and (2) D's victory counterfactually depends upon their doing so. If either condition fails, contributing is obviously inefficient. We can often expect these conditions to fail. Aside from the standard difficulties which arise in such cases (c.f. Olson, 1965), there is the simple fact that there will often be few individuals able to purchase enough votes to be guaranteed of making a difference to the outcome without incurring costs of greater magnitude than the utility they stand to gain from getting their way. These two benefits, such as they are, will often fail to obtain.

Second, the appeal to intensities of preference faces the problem of interpersonal comparisons. Suppose two referenda were to be held, the first over a cut to corporate tax rates, the second over the legal recognition of same-sex marriage.

⁵³ See, among others, Freiman (2014, p. 764), Levmore (2000-2001), and Philipson and Snyder (1996).

Suppose votes cost \$20. Sue, David, and George each purchase three additional votes in the former referendum at a net cost of \$80 (a \$20 opportunity cost for keeping their own votes, and \$60 for three additional votes). Suppose each also buys seven additional votes in the latter for \$160. We can perhaps infer that Sue, David, and George's preferences over same-sex marriage are twice as intense as their preferences over corporate tax. However, we cannot thereby infer that their preferences are *as intense as each other's*. Suppose only Sue, David and George vote in the corporate tax referendum. Sue and David vote in favour. George votes against. Sue and David will be victorious. But this belies the fact that George's preferences are potentially more than twice as intense as Sue and David's, in which case – accepting *arguendo* that we ought to account for intensities of preference in democratic decisions – the *status quo* would be a better result. Outcomes realised under vote-buying, then, will not necessarily reflect intensities of preference any better than outcomes realised under normal arrangements.

Most importantly, however, the political science literature has documented a range of reasons to believe that vote buying would lead to *lower-quality* outcomes overall. Most strikingly, Kochin and Kochin (1998) show that vote buying can lead to outcomes that are dispreferred by a substantial majority of citizens. Suppose proposal P would impose a net cost $-c$ on all citizens. Suppose that a very small minority of citizens (perhaps a single citizen) offers all others a side-payment s to vote for P. Suppose that s is smaller in magnitude than $-c$. Even accounting for the side-payment, it would be best for almost everyone if P were voted down. Suppose a clear majority of citizens know this, and prefer not-P over P. Vote buying drastically raises the probability that P will prevail, these facts notwithstanding. For any given voter, I , I can be certain that their vote will neither be decisive, nor probabilify the outcomes to any significant degree (Brennan and Lomasky, 1993, ch. 4). Consider, then, the payoff structure for I ;

Other voters' choices	Take side-payment	Refuse side-payment
I 's choices		
Take side-payment	$s-c$	s
Refuse side-payment	$-c$	0

Accepting the side-payment and voting for P is the dominant strategy for I . If others refuse, I might as well profit by accepting s . If others accept, I might as well accept s

to partially counterbalance their losses. And since *all* citizens can be confident that their votes will make no difference to the outcomes or probabilities, accepting *s* is the dominant strategy for all citizens (or, at least, for all those without unusually intense expressive preferences for not-P).⁵⁴ P, then, looks to be the inevitable result.

There are several other likely costs. Epstein (1985, pp. 987-8) points out that vote buying would promote rent-seeking. One has an interest in buying votes if and only if one expects to profit by doing so. The most straightforward means of profiting would be to make use of one's political power to divert public funds to one's private purposes. Vote markets would also be plagued by wealth effects. Given the declining marginal utility of money, the worse-off would be substantially more likely to sell their votes than the wealthy.⁵⁵ Systems of vote-buying, then, would likely overweight the preferences of the wealthy (who are able to easily purchase additional votes), and under-weight the preferences of the worse-off (who will be less able to buy, and more willing to sell).⁵⁶ For similar reasons, vote markets would tend to diminish the responsiveness of government to the worse-off, exacerbating elite bias (Rose-Ackerman, 1985, p. 963). Governments would plainly have little incentive to respond to the preferences of those who'd sold their votes.⁵⁷ Vote buying might also depress participation by those who decline to sell. Empirical studies suggest that citizens are less likely to participate where their sense of political efficacy is undermined (Blais and Dobrzynska, 1998), something we might well expect were electoral outcomes to be reduced to mere contests over which wealthy group is able to purchase the greatest number of votes.

The instrumental case for vote buying looks very unconvincing. We should be cautious, however. Vote buying is demonstrably likely to lead to lower-quality outcomes. Yet I see no way of showing that it would necessarily do so. There are many ways in which vote buying might be implemented, some of which might avoid

⁵⁴ See Brennan and Lomasky (1993) on expressive voting.

⁵⁵ The less resources one has, the greater the utility one stands to gain from selling one's vote.

⁵⁶ Freiman (2014, p. 765) responds that since votes are likely to sell cheaply, selling one's vote is unlikely to be 'irresistible' to the worse-off. Yet prices need not be 'irresistibly' high to induce a substantial proportion of the worse-off to sell. They need only be greater than the (generally very minimal) expected value of each individual's vote.

⁵⁷ Responsiveness to the worse-off might be further diminished by the fact that the worse-off would be encouraged to make voting decisions on the basis of the benefits they stand to gain by selling their vote, rather than judgements as to which of the parties will better promote their interests (Stokes, 2007).

these costs (c.f. Taylor, 2016; Forthcoming-b, pp. 12-4). Wealth effects, for instance, might not be so prevalent under a regime in which only persons below a certain net wealth were permitted to buy. Contextual factors are significant, also. There would, for instance, be no risk of elite bias if vote buying were introduced under conditions of distributive equality. Vote buying might even give rise to valuable incentive-effects. For instance, voters, given their causal inefficacy, tend to be ‘rationally ignorant’ of political matters (c.f. Downs, 1957). Giving citizens the opportunity to acquire a more substantial degree of political power, then, might prompt them to gather more information. It at least possible – though very unlikely – that with the right institutional design, and under the right conditions, a plausible instrumental case for vote buying of *some* form could be constructed.

Instrumental considerations, though important, do not offer a conclusive case for, or against vote buying. Our intuitions, however, are more categorical. Were we to be presented with an ironclad instrumental case in favour of vote buying, I suspect most of us would continue to regard the practice as intuitively objectionable. Accounting for the wrongness of vote buying, then, requires us to consider its *non-instrumental* properties.

3.2. The Non-Instrumental Case Against Vote Buying

We shall consider three attempts to account for the wrongness of vote-buying non-instrumentally: appeals to exploitation, effective participation, and equality.⁵⁸ Each, we shall show, is problematic.

3.2.1. Exploitation

One natural thought is that vote buying would allow the wealthy to exploit the worse-off. We can make sense of this idea at the collective level easily enough. For A to exploit B is for A to take unfair advantage of some weakness or vulnerability of

⁵⁸ One important argument I do not discuss is Sunstein’s (1994, p. 849) charge that vote buying would lead citizens to value to practice of voting inappropriately. The argument has been already been powerfully critiqued by Lippert-Rasmussen (2011, pp. 135-6). It is also unlikely to be dialectically effective against proponents of vote buying, some of whom (e.g. Brennan and Jaworski, 2016) express scepticism about all arguments of that kind.

B's (Zwolinski and Wertheimer, 2016). As discussed above, it is likely that votes will largely be bought by the wealthy, and sold by the worse-off. Yet, if many among the worse-off sell, the worse-off will lose their collective political power, a resource of far greater value than the aggregate sum the wealthy (for reasons explained momentarily) would be required to transfer to the worse-off to acquire those votes. Vote buying would therefore allow the wealthy to take unfair advantage of – i.e. exploit – the worse-off.

This line of argument faces a major difficulty. It is widely accepted that the rightness of actions is fundamentally a matter of their impact upon individuals *qua* individuals, not their impact upon groups *qua* groups. We cannot claim that any individual member of the worse-off suffers exploitation merely in virtue of belonging to an exploited group without committing the fallacy of division. We need an argument to explain why this is the case. I do not think any such argument is available. To see why, we need to get more precise.

The following function expresses the expected value of a set of votes to an individual, I :⁵⁹

$$V_I(S) = P(D_S)U_I$$

S = some set of votes controlled by I

$V_I(S)$ = the expected value of S for I

$P(D_S)$ = the probability that S will be decisive

U_I = the utility for I of their preferred outcome

Suppose 1 001 people are choosing between ϕ and ψ . 900 have voted already, 500 for ϕ , and 400 for ψ . Suppose I is a ψ supporter, is yet to vote, and would gain \$5000 from ψ 's victory (i.e. $U_I = \$5000$). Let us refer to the other 100 persons yet to vote, collectively, as G . All members of G are strong ϕ supporters, each of whom would gain \$5000 from ϕ 's victory. Let us refer to the set of G 's 100 votes as S' . Suppose I purchases S' in its entirety, such that S contains 101 votes (S' , plus I 's own single vote). I can now guarantee victory for ψ – i.e. $P(D_S) = \sim 1$. So;

⁵⁹ Strictly, these formulae should include the costs, and expressive payoffs, of voting. We can safely set these aside for present purposes.

$$V_I(S) = \sim 1 \times \$5000 = \sim \$5000$$

The following function expresses the expected value of a single vote to an individual, J ;

$$V_J(B_J) = P(D_J)U_J$$

B_J = J 's single vote

$V_J(B_J)$ = the expected value of B for J

$P(D_J)$ = the probability that B_J will be decisive

Suppose J is a member of G . $V_J(B_J)$ is virtually zero. Only one additional vote is required to secure victory for ϕ . Save for I 's vote buying venture, all members of G are certain to vote for ϕ . $P(D_J) = \sim 0$. Which yields;

$$V_J(B_J) = \sim 0 \times \$5000 = \sim \$0$$

This case illustrates the fact that, because $P(D_S)$ increases exponentially as the size of S increases, $V_I(S)$ is not a simple additive function of the expected value of each vote in S . This explains why group-level exploitation is possible under vote buying.⁶⁰ The value to G of S' is very high. S' would easily guarantee victory for ϕ . Each member of G gains \$5000 from ϕ 's victory. So;

$$V_G(S') = \sim 1 \times \$500\,000 = \sim \$500\,000$$

Yet, suppose I offers each member of G \$20 for their vote, and each accepts, at a total cost of \$2000 to I . For each individual member of G , selling their vote is rational. The expected value of their individual votes is $\sim \$0$. Yet G , as a group, loses out enormously, gaining \$2000, but losing $\sim \$500\,000$. I plausibly takes unfair advantage of G , gaining a resource worth $\sim \$5000$ to themselves, and $\sim \$500\,000$ to G , for only \$2000. Surely, however, no *individual member* of G can complain of exploitation. Exploitation, after all, implies that one has been treated unfairly. But

⁶⁰ See also Levmore (2000-2001, pp. 122-5).

no individual can complain of unfairness. After all, it really is the case that their individual votes were worth very little. *I* offered a price well in excess of each vote's expected value – \$20 – and each voluntarily accepted. *I* gains the value of *G*'s collective political power. But that power never belonged, *de facto* or *de jure*, to any individual member of *G*. No individual member of *G*, therefore, can complain of unfair treatment (and, hence, exploitation) in being deprived of it.

Might vote buying be exploitative in some other way? It is certainly possible. Consider;

Ignorance: Unbeknownst to Cathryn, her vote stands to be decisive in an upcoming election. If Cathryn votes for ϕ , she will be \$10 000 better off. If she votes for Ψ , she will get nothing. Richard knows this. He also knows that if Cathryn votes for Ψ , he will be \$10 000 better off than if she votes for ϕ . Cathryn agrees to sell her vote to Richard for \$20, and votes for Ψ .

Richard exploits Cathryn by taking unfair advantage of her lack of knowledge. Richard's exploitation of Cathryn, however, crucially depends upon the fact that Cathryn's vote is of significant instrumental value. It is this which renders Richard's conduct exploitative. \$20 is an unfair price for a resource worth \$10 000. Such cases are *possible* in the real-world. Yet they are also extremely rare. Individual votes virtually never have non-trivial instrumental value (Brennan and Lomasky, 1993, ch. 4). A relatively low price (say, \$20) for a vote will generally not, as such, be unfair. Some citizens value their votes more highly for other reasons – e.g. for the expressive opportunities voting affords. But such citizens can demand a price commensurate with that value, selling only if they receive a satisfactory offer. Perhaps the very poor would be unable to engage in bargaining of this kind, and would be forced to accept just any offer, regardless of whether they thought it fair. Simple institutional devices – e.g. a mandated minimum price for votes – could be deployed to guard against this risk. Moreover, this argument at most vindicates the idea that buying votes from the worse-off, on unfair terms, is wrongful. We should surely also want an explanation of the wrongness of vote buying in a wide range of *other* cases. Exploitation, then, can at most account for the wrongness of vote buying in a very small subset of the cases with which we ought to be concerned.

3.2.2. Effective Participation

Susan Stokes (2007, pp. 90-1) writes that;

The essence of the violation of democracy represented by vote buying can hence be summarised thus: *because of their material poverty, a subset of the citizenry is deprived of effective participation in collective decisions to which they will be subject.*

On its face, Stokes' claim is puzzling. Permitting vote buying would not *deprive* the worse-off of their right to participate by voting. It would merely allow them the opportunity to enter contracts to either transfer their votes to others, or exercise their votes in a particular way.

Stokes, though, has a more particular claim in mind: vote buying would render the participatory efforts of the worse-off less effective, diminishing their political impact. There is an obvious instrumental reading of this argument, according to which reducing the political impact of the worse-off would lead to worse political outcomes. We have already shown, however, that such considerations do not tell decisively against vote buying. An alternative, noninstrumental reading, however, would hold that the fact that vote buying would diminish the political impact of the worse-off, *in itself*, explains the wrongness of vote buying. This reading of the argument faces a similar difficulty to the exploitation objection. Vote buying would almost certainly diminish the political impact of the worse-off, considered collectively. But, if we are to explain the wrongness of vote buying in terms of a loss of effective participation, we must explain why it is that individuals *qua* individuals would lose out in this respect. This, I think, cannot be done. To see why, we must first get more precise about the notion of political impact.

There are four salient forms of political impact: decisiveness, probabilification, contributory influence, and responsiveness. One is decisive in an election where the outcome counterfactually depends upon one's vote. If eleven people are voting over whether to ϕ or Ψ , and the vote is tied five-five, the final voter will be decisive.

Probabilification involves increasing the probability of the outcome one prefers being selected. In the case above, for example, if the first voter casts their ballot in favour of ϕ ing, that voter raises the probability of the group ϕ ing. Contributory influence can be understood, following Goldman (1999), as the imposition of a vector of force over the political process. Suppose that the first six voters in our case above vote to ϕ . The seventh voter can neither be decisive, nor probabilify the outcomes to any degree. They can, however, exert *force* in favour of their preferred outcome. Just as one exerts force for one's team by pulling on a rope in a tug of war, one can exert force for one's preferred political outcomes by casting a ballot in their favour. Responsiveness, finally, involves a disposition on the part of elected officials to satisfy some agent's preferences. Labour parties, for example, are often said to be highly responsive to the preferences of labour unions, insofar as they are strongly disposed to satisfy their preferences in political decision-making.

For the argument to hold, vote buying must cause individuals, *qua* individuals, to wrongfully suffer losses in one or more of these forms of impact. We can quickly dismiss both decisiveness and responsiveness. Vote buying cannot reasonably be said to deprive anyone of decisiveness since, as we have already pointed out, no-one can expect to be decisive in the absence of vote buying. Nor can any individual complain of a loss of responsiveness. Politicians are responsive to groups *qua* groups, not individuals *qua* individuals (individuals, in themselves, can make little difference to politicians' electoral prospects).

One might claim that those who sell their votes lose their ability to probabilify, and/or exert contributory influence in favour of, their preferred political outcomes. This is not obvious. Were vote buying permitted, there would presumably be a competitive market for votes. Individuals could sell to a buyer with the same political preferences as themselves. In that case, they will be able to vote for (as well as contribute to, and probabilify) their preferred outcomes, just as they would have done had vote buying not been permitted. Even if this were not so, individuals who voluntarily enter contracts to sell their votes surely cannot reasonably complain of a loss of political impact. Such persons seem straightforwardly to have waived – i.e. contracted away – whatever claims they had in this respect.

What, then, of citizens who do not sell their votes? Such citizens do not lose out on contributory influence. Their votes will continue to impose a vector of force in favour of their preferred outcomes of the same magnitude they would have imposed *without* vote buying. Where vote buying leads to more lopsided electoral outcomes, citizens will have a diminished capacity to probabilify political outcomes.⁶¹ Yet it seems entirely implausible that this can explain the wrongness of vote buying. Consider the following case;

Persuasion: A referendum is to be held over the legal recognition of same-sex marriage. A televised debate is held in advance. During the debate, Jeremy makes a series of powerful arguments in favour of marriage equality. He persuades 10,000 people who would otherwise have stayed home to vote.

Jeremy's actions in *Persuasion* substantially increase the total number of voters. Other things equal, his doing so will diminish each voter's impact upon the probabilities of the relevant outcomes.⁶² We should hardly wish to conclude, however, that Jeremy has somehow wronged his fellow citizens. Citizens, intuitively, simply do not have claims to probabilify political outcomes to any particular degree. The mere fact that vote buying might diminish citizens' abilities to probabilify political outcomes, then, goes no distance to explaining the wrongness of vote buying.

One group remains: citizens who involuntarily sell their votes (perhaps out of material poverty, for example). Such persons obviously cannot be said to have waived any claims to political impact they might have had. I am happy to concede that such citizens would be wronged by any loss in political impact they might suffer under vote buying. But, again, we should surely want to explain the wrongness of vote buying in a wide range of *other* cases, as well. The appeal to effective participation, then, can at most account for the wrongness of vote buying in a small subset of the cases with which we ought to be concerned.

⁶¹ Individuals' votes have a lower probability of decisiveness where the expected margin is greater (Brennan and Lomasky, 1993, ch. 4). We should note in passing that, given the possibility of competitive markets in votes, vote buying will not necessarily lead to more lopsided outcomes.

⁶² Individuals' votes also have a lower probability of decisiveness where the number of voters is greater (Brennan and Lomasky, 1993, ch. 4).

3.2.3. Political Equality

By far the most popular objection to vote buying appeals to political equality. Trappenburg (2000, p. 355), for example, writes;

All voters should count equally, because the distribution of political power has everything to do with equal citizenship. The sphere of political power should not be invaded by market principles, one should not be able to buy the voters favour.

However, Trappenburg is unacceptably vague. What are the requirements of equal citizenship? Why does vote buying violate them? Some advance an instrumentalist view, holding that vote buying would lead to inequalitarian outcomes by diminishing the responsiveness of elected officials to the worse-off (Hasen, 2000, p. 1330; Karlan, 1994, p. 1470; Rose-Ackerman, 1985, p. 963). I have discussed instrumental arguments of this kind already, and will say nothing further about them. There are two non-instrumental egalitarian arguments, however, that merit closer investigation.

First, Stokes (2007) appeals to Dahl's (1989, p. 86) 'equal consideration of interests' principle, according to which "...during a process of collective decision-making, the interests of every person who is subject to the decision must (within the limits of feasibility) be accurately interpreted and made known." Vote buying, Stokes claims, violates this principle. Sellers' votes do not carry information as to sellers' interests. The interests of vote sellers, therefore, are neither made known, nor accurately interpreted, where vote buying is permitted. Unfortunately, Stokes' argument proves too much. Individuals' votes often fail to carry information about their interests. Many voters – 20%-30% in US Presidential elections, by some estimates (Lau et al., 2008, p. 402) – simply do not know which of the parties would better promote their perceived interests, and end up voting 'incorrectly' in consequence. Moreover, there is the well-documented phenomenon of sociotropic voting (e.g. Feddersen et al., 2009), wherein individuals vote in accordance with their moral attitudes, rather than their interests. Stokes' argument, then, condemns democratic

systems that do not permit vote buying quite as much as it condemns systems which do.

More promising is the appeal to equal political power. David Copp (2000, p. 90), for example, claims that:

...a market in votes would undermine the ideal of equalising political power... It would permit some people to acquire greater political power than others by permitting them to buy and exercise more votes than they are initially assigned by the system.⁶³

It is overwhelmingly plausible that equal respect for persons in the political domain requires that citizens enjoy equal political power of some sort or other.⁶⁴ Yet, as presented in the literature, the argument is crucially incomplete. Some inequalities of political power are obviously inconsistent with equal respect – e.g. those which obtain between hereditary monarchs and their subjects. Others, however, are not. In *Persuasion*, for example, Jeremy exercises far greater political power (in at least some sense) than the average citizen. There is counterfactual dependence between his television appearance, and 10 000 additional votes for same-sex marriage. Still, there does not seem to be anything objectionable about this from an egalitarian point of view. It is not as though Jeremy has come to command a greater than equal share of society's resources, or else occupy some elevated social status, for example.

It is not enough, then, for proponents of the egalitarian objection to point out that vote buying entails political inequalities of some kind. What needs to be shown is that vote buying would engender political inequalities of an *objectionable* kind. Yet, distinguishing between malignant political inequalities of the kind plausibly engendered by vote buying, and benign inequalities of the sort described in *Persuasion*, is not straightforward. To see this, consider two initially plausible ways in which such a distinction might be drawn.

⁶³ See also Christiano (2003, p. 55), Satz (2010, p. 102), Sunstein (1994, p. 849), and Tobin (1970, p. 269).

⁶⁴ See Beitz (1989), Christiano (2008), and Kolodny (2014b) for contrasting arguments to this effect. See chapter four for an overview of these arguments. I defend a requirement of this sort in chapter seven.

One might, first, appeal to equal opportunity. Everyone, it might be said, has equal opportunities to persuade others of their point of view. Whereas, given inequalities in wealth, persons do not have equal opportunities to buy votes. However, it is patently false that individuals have equal opportunities to persuade one another. Persuasion requires resources (e.g. knowledge, time, and credibility) that are distributed very unequally in contemporary democratic societies. Moreover, this view would entail that vote buying is unobjectionable under conditions of distributive equality. If persons had equal resources, they would have equal opportunities to acquire additional votes. Most of us, I suspect, would still find vote buying objectionable under such conditions, however. This line of argument, then, is unpromising.

Alternatively, one might distinguish between political power and political influence. We might define power, on this view, as the ability to exercise direct, personal control over governmental decisions. Influence, on the other hand, we might define as the ability to cause others to mobilise *their* political power in the manner one desires. Jeremy exercises unequal influence, but not unequal power. He causes 10 000 people to cast their votes for same-sex marriage. Just like everyone else, however, he has just a single vote of his own to cast. The same, obviously, cannot be said of Ronald the rich magnate who purchases 10 000 absentee ballots to personally fill out and cast for his preferred option in the same-sex marriage referendum. The latter enjoys a form of direct control over the decision the former does not. Ronald's conduct, moreover, seems obviously objectionable in a way Jeremy's does not.

Proponents of the egalitarian view might take our divergent intuitions in these cases as evidence for the claim that inequalities of power are objectionable from an egalitarian point of view, whereas inequalities of influence are not. They might, then, go on to claim that vote buying (unlike persuasion) necessarily gives rise to inequalities in power, and is objectionable on that basis.

There is clearly something to this. Inequalities in power are constitutive of many paradigmatic relations of objectionable social inequality. The relation between lord and servant, for example, is objectionable partially in virtue of the fact that the lord

is able to exercise direct, asymmetric control over his servants' lives.⁶⁵ Husbands in the Victorian era stood in positions of objectionable superiority over their wives partially in virtue of the fact that they enjoyed a great deal of power and authority over their wives' access to resources, liberties and so on. Contrast this with, for example, George, Gerald, and Gregory, who go out for dinner once a week. George is a gastronomic expert, who always succeeds in persuading the others to go to his preferred restaurants. George, intuitively, does not occupy a position of objectionable superiority over his friends. He simply, by dint of his superior knowledge, is able to mobilise his friends to act so as to conform to his desires. Inequalities of influence (on the definition above) do not seem intrinsically inegalitarian. I am therefore inclined to accept the general point, here. Inequalities of influence, unlike inequalities in power, are not necessarily objectionable from an egalitarian point of view.

The trouble, however, is that vote buying does not necessarily involve inequalities in power, thus defined. Direct vote buyers acquire property rights over sellers' ballot papers, thereby increasing their own 'stock' of political power. A person with 10 000 votes in their possession plainly enjoys a great deal more direct, personal control over the political process than a person with a single vote. The egalitarian argument, on this interpretation, unproblematically explains the wrongness of direct vote buying. Indirect vote buying, however, does not involve transfers of property rights over votes. Indirect vote buying, then, does not necessarily change the amount of direct, personal control any particular agent enjoys over governmental decisions.⁶⁶ Indirect vote buying, on the definitions above, rather affords vote buyers additional *influence*. Vote buyers cause others to mobilise their own voting power in the manner desired by the vote buyer, via the offer of material incentives. The inequalities inherent in indirect vote buying are not distinct in kind from those which obtain between Jeremy and the citizenry in *Persuasion*. The difference, instead, lies in the way in which these inequalities are *established*. It seems doubtful, then, that any appeal to the sheer inequalities of power (or

⁶⁵ I offer an argument to the effect that such relations are inherently inegalitarian, and objectionable in virtue of that fact, in chapter seven.

⁶⁶ Though, of course, it might do so contingently. Officials might, for example, be prepared to literally take policy directions from a person able to direct thousands of others' voting behaviour.

influence) engendered by vote buying can plausibly differentiate between indirect vote buying and persuasion.⁶⁷

Most of the objections raised to the accounts above take the same form. Namely, that there are important cases of objectionable vote buying, the wrongness of which the account in question cannot explain. That is not to say that any of these arguments is entirely mistaken. An account of the wrongness of some act-type is not shown to be wholly false merely because it fails to explain the wrongness of every token instance of that act-type. All such objections show is that the accounts in question are incomplete explanations of the wrongness of the act-type under discussion. We must look to some novel account if we wish to explain the wrongness of the cases existing accounts fail to cover. In what follows, I aim to offer just such an account.

3.3. Vote Buying and Respect for Autonomy

I will argue that vote buying involves a peculiar failure of respect for persons as autonomous agents, and is wrong for that reason.⁶⁸ Call this the ‘respect account’. Setting out the argument requires us first to get more precise over two concepts – respect, and autonomy.

Darwall (1977, p. 38) distinguishes between recognition respect and appraisal respect. Appraisal respect consists in “...an attitude of positive appraisal of [a] person either as a person or as engaged in some particular pursuit.” One might have appraisal respect for Nelson Mandela as an exemplar of human character, or for Donald Bradman as an exceptional sportsman, for instance. Recognition respect, by contrast, consists in “...giving appropriate consideration or recognition to [some object or property thereof] in deliberating about what to do.” Respect of this sort might be extended to persons simply *as persons*, or *as bearers of particular, valuable*

⁶⁷ I do not claim that no satisfactory *egalitarian* account of the wrongness of indirect vote buying is available. Nothing I say in the following section is incompatible with vote buying also being objectionable on egalitarian grounds.

⁶⁸ Stokes (2007, p. 96) offers a different autonomy-centric argument against vote buying. Lippert-Rasmussen (2011, p. 134) offers a powerful critique of Stokes’ argument.

properties (e.g. sentience, rationality, moral equality). The intentional or negligent infliction of unnecessary pain upon another person, for instance, evinces a failure of appropriate consideration for that person as a bearer of the valuable property of sentience. It thereby constitutes a failure of recognition respect for that person as a sentient being. The charge I shall advance is that vote buying involves an objectionable failure of recognition respect. I shall therefore use the term respect to refer only to recognition respect for the remainder of the chapter.

Persons possess many valuable properties in virtue of which they are owed recognition respect. Prominent among these is individual autonomy. Autonomy is a matter of *self-governance*: “...being one’s own person, directed by considerations, desires, conditions, and characteristics that are not simply imposed externally on one, but are part of what can somehow be considered one’s authentic self” (Christman and Anderson, 2005, p. 3). There is extensive controversy over the sufficient conditions for autonomous agency.⁶⁹ Fortunately, we need not enter such debates. We need only appeal to a single, uncontroversial necessary condition. The idea of autonomous agency implies acting *for reasons*. Autonomous agents, paradigmatically, act on the basis of considerations they recognise as counting in favour of the course of action they are pursuing. That is to say, such agents act on the basis of reasons. By contrast, very young children do not plausibly count as autonomous agents precisely because their behaviour is not plausibly directed by considerations they can recognise as counting in favour of, or against, particular courses of action. To count as autonomous, then, one must possess the capacity to *recognise, and respond to reasons for action*, to a sufficient degree.⁷⁰ Without that capacity, acting for reasons – and, thus, autonomously – would necessarily be impossible.

Respect for persons as autonomous agents requires us to show sufficient regard for others’ valuable autonomy-capacities (including their capacity to recognise and respond to reasons), and refrain from actions which fail to display such regard. Actions are *pro tanto* wrong to the extent that they fail to express such regard. Such actions typically involve some form of unwanted interference. Paternalistic

⁶⁹ Contrast Dworkin (1988) and MacKenzie and Stoljar (2000), for example.

⁷⁰ Certainly, such a capacity is not sufficient for autonomy. Slaves paradigmatically suffer impaired autonomy, and yet could still surely possess the capacity to recognise and respond to reasons.

interference, for example, involves substituting one's own (allegedly superior) judgement for another's, wrongfully displaying insufficient regard for the target's own autonomy-capacities (Shiffrin, 2000, p. 220).

Respect for persons as autonomous agents in the *political* domain, however, cannot plausibly be a matter of simple non-interference. Political decisions determine the conditions under which the state subjects citizens to coercion. Yet the 'circumstances of politics' are such that, though there is a need to come to decisions as to how our collective affairs are to be structured, we cannot reasonably expect any such decision to command unanimous assent, given the inevitable fact of disagreement (Waldron, 1999, pp. 102-3). If political decisions are to be taken at all, then, it is simply inevitable that some persons will be subject to unwanted interference. Citizens might reasonably complain that the content of political decisions subjects them to objectionable, disrespectful *forms* of interference (e.g. paternalism). But they cannot reasonably object to the fact of interference, as such.

Given these facts, then, I hold that respect for persons as autonomous agents in the political domain is a matter of the *procedures* by which political outcomes are realised.⁷¹ Political decisions must be made in accordance with procedures which, in themselves, express sufficient regard for the autonomous agency of those who are to be subject to those decisions. I think vote buying is wrong because, as an aspect of political procedure, it is deeply disrespectful of citizens as autonomous agents.

To see this, it will be easiest to begin with a non-political case.

Business: Dominic, Matthew, and Jane jointly own a business. They must collectively decide whether to ϕ or Ψ . Jane argues in favour of Ψ ing on the grounds that ϕ ing will cause wrongful harm to John, whereas Ψ ing will not. Matthew, however, has paid Dominic \$100 to simply ignore whatever Jane has to say. Dominic, therefore, gives no weight to this consideration in his deliberations. A vote is eventually taken. Dominic

⁷¹ This general line of argument is familiar. See Valentini (2013, pp. 192-5) and Waldron (1999, ch. 5), for example.

and Matthew vote to Ψ anyway, on the grounds that doing so will maximise profit.

Matthew's behaviour is egregiously disrespectful of Jane. In general, the fitting response to becoming cognisant of some consideration which counts in favour of (or against) some action is to give weight to that consideration in one's deliberations – i.e. to treat that consideration as a reason for action (Smith, 1994, pp. 71-6).⁷² That, in turn, suggests that the fitting attitude to adopt towards agents one recognises as having the capacity to recognise and respond to reasons is a kind of *openness*. One ought, at least, acknowledge the possibility that considerations advanced by others might amount to reasons in favour of, or against, the course of action in question, and might therefore merit weight in the deliberations of those making the decision.

It is for this reason that Matthew's conduct is objectionable. His actions express the conviction that *no* considerations advanced by Jane ought to be given weight by others, *whatever* those considerations might be. That constitutes a highly objectionable failure of respect for Jane's capacity to recognise and respond to reasons. If Matthew *did* recognise Jane's capacities in this respect, he would also recognise that Jane might advance considerations that amount to reasons. In which case, as we have argued, the fitting response on the part of others would be to attach weight to those considerations, rather than ignore them. Given the central importance of the capacity to recognise and respond to reasons for individual autonomy, Matthew's actions express a profound lack of respect for Jane as an autonomous agent.

Here, it is important to be precise. The wrongness of Matthew's conduct is not explained by the fact that he *causes Dominic* to give no weight to considerations advanced by Jane. It is not necessarily disrespectful to fail to give weight to considerations advanced by others in deliberation. It is therefore not necessarily wrong to cause others to fail to do so. Suppose, for example, that Jane had instead argued *in favour* of ϕ ing on the grounds that doing so would cause wrongful harm to John. Clearly, there would be nothing wrong with Dominic's failing to regard that

⁷² Individuals who fail to give weight to considerations which count in favour of some contemplated action are, to that extent, rationally criticisable.

consideration as counting in favour of ϕ ing. His doing so would reflect a legitimate judgement as to the merits of the particular consideration to which Jane has appealed, rather than a judgement as to Jane's *capacity* to recognise and respond to reasons in general.

Nor does the wrong of Matthew's conduct consist in his causing Dominic to ignore *reasonable* considerations advanced by Jane. Suppose that Dominic would have ignored Jane even if Matthew had not paid him to do so. Matthew's actions, intuitively, would remain highly objectionable. This, I suggest, is because Matthew's actions express the conviction that none of the considerations Jane might *potentially* advance ought to be regarded as reasons for action in the relevant context. It is *that* which derogates Jane's capacity to recognise and respond to reasons – and that, therefore, which expresses disrespect for her as an autonomous agent.

I think that the wrong of vote buying is continuous with the wrong exemplified by Matthew's behaviour in *Business*. The typical objective of vote buying is to guarantee (or, at least, raise the probability) that one's preferred political outcomes will be realised *in spite of* the considerations others might advance in the deliberative process prior to the vote. Buying votes would make no sense if one expected the citizenry to support one's preferred political outcome on its merits or, alternatively, if one were willing to accept the citizenry's judgement on the matter. Buyers pay sellers to vote simply as the buyer directs. In effect, sellers are paid to be *unresponsive* to countervailing considerations advanced by others in determining how they will vote, *whatever* those considerations might be. That, I think, amounts to a clear failure of appropriate regard for one's fellow citizens' capacities to recognise and respond to reasons.

As we have argued, the appropriate recognition of such capacities in others involves acknowledging the possibility that others might advance considerations that ought to be treated as reasons by the relevant decision-makers. In the *political* case, this requires one to acknowledge the possibility that one's fellow citizens might advance considerations that genuinely count in favour of, or against, the various options on the political agenda. Vote buying expresses the opposite: that citizens ought not treat considerations advanced by others (or, at least, considerations which militate

against the buyer's preferred outcome) as reasons. Given the central importance of the capacity to recognise and respond to reasons for autonomous agency, vote buying thus expresses a profoundly disrespectful attitude towards one's fellow citizens as autonomous agents.

It is, as ever, important to be precise. Vote buyers pay sellers to disregard considerations advanced by others in the deliberative process. But that, in itself, is not what is fundamentally wrong with vote buying. It is not disrespectful to refuse to give weight to unreasonable considerations (e.g. racist or sexist considerations) advanced by others in political deliberation, for example. Doing so does not necessarily derogate others' capacities to recognise and respond to reasons. It might simply express the reasonable conviction that a *particular* consideration advanced by others ought to be discounted.

Vote buyers, of course, also cause citizens to fail to give weight to reasonable considerations advanced by others. But such failures are ubiquitous in democratic societies. No citizen has the time or resources to give sufficient attention to all considerations – reasonable or unreasonable – advanced in public deliberation. It seems doubtful that the wrong of vote buying consists in causing citizens to do something they were virtually certain to do in any case.

The wrong of vote buying, rather, consists in the disrespectful attitude it expresses concerning the *capacity* of one's fellow citizens to recognise and respond to reasons – i.e. that citizens ought not treat considerations advanced by others, *whatever they might be*, as reasons for action. Vote buyers express a deep disrespect for their fellow citizens as autonomous agents, just as Matthew expresses a deep disrespect for Jane.⁷³ It is this, I claim, which fundamentally explains the wrongness of vote buying.

⁷³ One might object that the two cases are distinct in the following way. Vote buyers express a negative attitude towards their fellow citizens *de dicto*. Matthew, however, expresses a negative attitude towards Jane *de re*. The latter, one might claim, is disrespectful, whereas the former is not. I don't see why. Suppose that Matthew and Dominic were about to go into a business meeting, but were unsure who else was going to be there. Dominic's paying Matthew to ignore whatever anyone else has to say – whoever they might be – still seems intuitively disrespectful.

However, to explain the wrongness of vote buying is not yet to justify its criminalisation.⁷⁴ Verdicts as to the wrongness of some act-type do not automatically entail verdicts as to the rightness of criminalising that act-type. My intentionally breaking a promise to meet Connie for lunch is morally wrong. Still, no-one should think it appropriate for the state to punish me for doing so. It might, moreover, be thought that the respect account faces a particular difficulty on this score. There are, after all, many ways in which one can express disrespect for others' capacities as autonomous agents. Sexists who argue for the disenfranchisement of women by appeal to their purportedly inferior mental capacities, for instance, clearly express an objectionable failure of respect for women's capacities as autonomous agents. Yet, most of us would regard punishing such persons for public utterances of that sort as an unacceptable infringement upon freedom of expression.

Proponents of the respect account might, as such, be thought to face a dilemma. They might insist that vote buying ought to be punished, given its disrespectful character. They will then, however, be unable to explain why sexist public utterances and the like ought not also be punished. On the other hand, they might concede that the latter ought not be punished. However, they will then be unable to explain why vote buying ought to be punished. Either way, the account is problematic.

This, however, is a false dilemma. The appropriateness of punishing a particular act-type is a matter not merely of the wrongness of the act-type, but also of the other considerations in play. The wrongness of a given act-type renders the proportionate punishment of acts of that type *prima facie* appropriate. But, if the punishment of some wrongful action would have unacceptable moral costs, punishment will be inappropriate, all things considered. This explains why punishing individuals for breaking minor promises is inappropriate. The institutional mechanisms required to carry out such punishments would be hideously intrusive, for example.

Proponents of the respect account, then, can respond to the 'dilemma' as follows. Publicly degrading the capacities of women is wrongful, because disrespectful. But criminalising disrespectful public utterances of this sort would entail unacceptable

⁷⁴ This is important. One of motivations with which we began the discussion was to explain why it is that the state might legitimately punish vote buying.

moral costs. Doing so would risk a chilling effect, wherein persons self-censor legitimate speech out of fear of criminal prosecution. There is the risk that judges interpreting statutes criminalising such speech will read them too broadly, punishing legitimate acts of expression. There is also the risk of causing a backlash against the communities such laws might aim to protect. And so on. Criminalising vote buying, by contrast, would entail no such costs. Indeed, given that vote buying will almost always be instrumentally bad (as we have argued above), bans on the practice are likely *beneficial*, rather than harmful.

Proponents of the respect account, therefore, have a straightforward, three-part explanation for why vote buying ought to be punished. First, vote buying is morally wrongful. Punishing vote buying is thus *prima facie* appropriate. That justification might be defeated if it could be demonstrated that punishing vote buying is likely to entail unacceptable moral costs of other kinds. However, secondly, punishing vote buyers would not entail unacceptable moral costs of other kinds. Indeed, thirdly, bans on vote buying almost certainly have a range of good consequences of other kinds. The respect account, then, explains both the wrongness of vote buying, and the appropriateness of banning the practice.

The respect account also avoids the problems of the alternative accounts. The account makes no reference to the outcomes realised by vote buying. Unlike the instrumental account, then, it is able to explain what's objectionable about vote buying even in cases where it might realise favourable results. Unlike the exploitation and participatory accounts, the respect account can explain why vote buying wrongs individuals *qua individuals*. All citizens have claims that others respect their autonomous agency. Others have duties not to perform actions which fail to express such respect. Vote buyers violate those duties. Finally, the respect account offers us the resources to distinguish between the malignant political inequalities engendered by vote buying, and the benign inequalities exemplified in *Persuasion*.⁷⁵ Political inequalities founded upon (sufficiently respectful) persuasion and argument do not constitute failures of respect for persons as autonomous agents. Indeed, such inequalities arise in virtue of a process (rational persuasion)

⁷⁵ Though, to be clear, I do not think *all* inequalities which arise in argument and persuasion are morally unproblematic (see Sanders, 1997).

which implies a recognition of such capacities. It would make no sense to seek to rationally persuade others of one's point of view unless one recognised others' capacities to recognise the considerations to which one appeals as reasons, and respond appropriately (agents without such capacities, presumably, cannot be moved by reasons and thus cannot be persuaded of anything). The same, obviously, cannot be said of vote buying.

The respect account also has the resources to resolve two important puzzles concerning vote buying. The first of these is Lippert-Rasmussen's (2011) puzzle over the moral difference between vote buying and election promises mentioned in the introduction. Unlike vote buying, there is no sense in which promising to promote the interests of citizens if elected expresses disrespect for citizens' capacities to recognise and respond to reasons. Indeed, issuing such promises implies a *recognition* of such capacities. Pursuing such a strategy makes sense only insofar as one believes citizens can recognise and respond to an important sort of reason for action – i.e. self-interest.

The second puzzle is raised by Freiman (2014, pp. 765-6), who asks why vote buying ought to be legally prohibited if relevantly similar practices like pork-barrelling ought to be legally permitted? The respect account supplies us with a straightforward answer. Pork-barrelling might generally be regrettable on instrumental grounds. In itself, however, it does not involve any expression of disrespect for persons as autonomous agents. Rather, like election promises, pork-barrelling only makes sense as a political strategy insofar as one recognises the capacity of one's fellow citizens to recognise reasons of self-interest.⁷⁶

The respect account, then, offers an independently compelling account of the wrongness of vote buying, an explanation as to why vote buying ought to be criminalised, avoids the problems of competing views, and resolves two important puzzles about vote buying. Still, there is an important line of objection it is worth briefly exploring.

⁷⁶ Vote buyers also, of course, acknowledge the capacity of vote sellers to recognise reasons of self-interest. The difference between vote buying and pork barrelling is the attitude expressed by vote buyers towards *third parties* to those transactions – i.e. those whose deliberative contributions buyers pay others to ignore.

3.4. Objections

Much the most obvious way in which one might object to the respect account would be to contend that the account proves too much.⁷⁷ One version of this objection would claim, following Iris Marion Young's (2001) critique of deliberative democracy, that the respect account unacceptably rules out a range of valuable forms of political activism. The respect account requires that citizens pursue their political objectives in a manner which expresses sufficient regard for others' autonomy-capacities – particularly, their capacity to recognise and respond to reasons. It might be thought that this, in turn, would require that individuals pursue their preferred political outcomes only via processes of rational, deliberative persuasion and argument of the sort familiar from (some!) philosophy seminars. That, in turn, rules out a range of other forms of political activity – political protest and civil disobedience, for example. That is surely unacceptable. Opportunities to engage in such activism are among the most valuable aspects of democratic social arrangements.

This, however, simply misunderstands the respect account. The respect account does require that citizens, in advancing their political objectives, show sufficient regard for others' capacities to recognise and respond to reasons. Political protest and civil disobedience will often be perfectly acceptable on that score, insofar as the object and effect of such exercises is simply to raise issues in the public consciousness, and persuade others of the activists' point of view. Such exercises do not express disrespect of any sort. Indeed, as noted above, attempts to persuade others of anything imply a recognition of others' capacities to recognise and respond to reasons.

More militant acts of protest and civil disobedience cannot be described in this way, insofar as their object is to bring about political outcomes by force. The respect account does entail that these forms of activism are objectionable. That seems exactly right. Arson attacks on abortion clinics are a form of political activism. They

⁷⁷ One version of this objection would hold that the respect account would require the criminalisation of an excessively expansive set of expressive acts. I have responded to this charge already, above.

are also obviously wrongful. Part of the explanation of that fact is, plausibly, their disrespectful character.

This is not to say, however, that more militant forms of activism can never be justified. Respect for autonomy is a significant moral value. In my view, however, it is not lexically prior to all other values. If the goods which might plausibly be realised by more militant forms of activism are weighty enough, then such activism may sometimes be justified – though always, in some sense, morally regrettable, in virtue of its disrespectful character.

This, of course, commits proponents of the respect account to the view that vote buying might also sometimes be justified all-things-considered (though in some sense morally regrettable), if the goods it might achieve are weighty enough. That, though, is hardly an objectionable feature of the respect account. On the contrary, it will be a consequence of *any* view of vote buying which does not regard the value upon which it is premised as lexically prior to all others. It also seems exactly right. Suppose, for instance, that vote buying was the only way to stop a government hell-bent on genocide or enslavement coming to power. Surely, in such a case, buying votes would not merely be permissible, but required, all-things-considered. We should reject any view, I think, which entails otherwise.

In practice, as we have argued above, there will be very few cases in which vote buying is likely to have anything other than bad effects. There will therefore be still fewer in which vote buying's good effects outweigh the disvalue of the practice, all-things-considered. Certainly, such instances will be so uncommon as to lend no plausibility to any claim that legal prohibitions on the practice should be lifted. This line of objection, then, is unsuccessful.

We might, however, reframe the objection as follows. The charge against vote buying, on the respect account, is that vote buyers express the conviction that no considerations others might advance in the deliberative process ought to be treated as reasons for action. As such, vote buyers fail to express sufficient regard for others' capacities to recognise and respond to reasons in the political process – and, by extension, express disrespect for such persons as autonomous agents. Yet speech

acts urging that the deliberative contributions of others ought to be disregarded are commonplace in democratic life. In many cases, they seem entirely unproblematic. Public health advocates urge us to disregard the deliberative contributions of tobacco lobbyists, for example. The respect account would appear to condemn such speech acts as wrongful. That, surely, cannot be right.

I have a two-part response, here. First, we should notice that there are many speech acts of this general sort that *are* objectionably disrespectful. Sexists might urge citizens to discount the deliberative contributions of women on the grounds of their purportedly inferior mental capacities, for example. Speech acts of that sort express an adverse, unwarranted judgment as to others' capacities to recognise and respond to reasons. We are right to condemn such utterances as wrongful. It is a virtue, not a defect, of the respect account, that it is able to explain the precise *character* of the wrong such utterances involve.⁷⁸

Secondly, it is important to look closely at cases in which such utterances do not seem objectionable. In my view, public health advocates (and the like) are not best interpreted as advancing any claims as to the *capacities* of tobacco lobbyists to recognise and respond to reasons. Rather, their claims are better interpreted as pertaining to the *conduct* and *motivations* of such persons. Namely, that the considerations such persons advance in public deliberation do not proceed from good-faith attempts to exercise their deliberative capacities. Rather, they represent disingenuous attempts to advance the interests of the groups they represent – a claim for which there is ample, widely accepted evidence. Such utterances, then, represent legitimate judgments as to the merits of the particular considerations tobacco lobbyists (and their ilk) advance – not global judgements as to the capacities of such persons. The respect account, then, does not condemn such utterances as wrongful.

One might worry, at this point, that this commits proponents of the respect account to the view that *vote buying* might sometimes be unobjectionable. After all, vote buyers might, perhaps, choose to buy votes not out of a desire to promote their own

⁷⁸ Though, as we have argued above, this in no way commits proponents of the respect account to the view that such speech acts ought to be *criminalised*.

political interests but, rather, in response to some legitimate judgement as to the merits of the particular deliberative contributions advanced by some political opponent.⁷⁹ To fix ideas, we might imagine that some tobacco control measure was up for direct referendum, and some wealthy public health advocate chose to purchase votes out of a legitimate concern that the deliberative contributions of the tobacco lobby were without merit.

Notice, however, that there is a crucial difference between the expressive significance of purchasing votes, and publicly declaring that the deliberative contributions of some particular agent or agents should be disregarded. Namely, that in the latter case, one expresses a specific judgement as to the merits of the considerations advanced by some proper *subset* of ones' political opponents. Vote buyers, by contrast, enter into contracts with vote sellers, requiring the latter to disregard the deliberative contributions of *all* one's political opponents, regardless of the merits of the particular considerations they might advance. It is simply implausible, in any real-world political decision, that there will be *nothing* of merit that might be said in favour of political propositions with which one disagrees. The buying of votes, then, will be disrespectful in a way that the mere expression of a legitimate judgement as to the merits of a particular set of considerations advanced by others will not be. This line of objection, then, is also unsuccessful.

3.5. Conclusion

In this piece, I have sought to defend the orthodox wisdom – that vote buying is morally wrong, and that prohibitions on vote buying are morally justified. Instrumental considerations tell heavily against vote buying, but are not decisive. And while existing non-instrumental accounts typically gesture towards serious concerns with vote buying, they all, ultimately, fail to explain the wrongness of vote buying in an unacceptably wide range of cases. I have argued that it is the disrespectful character of vote buying which ultimately explains what's wrong with the practice. Existing bans on the practice are, as such, morally justified.

⁷⁹ Such persons are surely vanishingly rare.

4. Enfranchising the Youth: An Argument from Convergence

The twentieth century bore witness to a great expansion in access to voting rights worldwide. Australia enfranchised women at the federal level in 1902, followed by the UK between 1918 and 1928, and the US in 1920. Indigenous Australians were gradually enfranchised between 1949 and 1965. The passage of the *Voting Rights Act* in 1965 ended the most egregious cases of the disenfranchisement of African Americans in the South. The blanket exclusion of children, however, remains a virtually constant feature of democratic societies. The vast majority of democracies extend voting rights only to those over the age of 18.⁸⁰ Survey data shows that an overwhelming majority of people support these arrangements.⁸¹ Many major works in democratic theory do not mention the issue at all (e.g. Estlund, 2008; Kolodny, 2014b; Pettit, 2012; Waldron, 1999). Those which do tend to assume that children's exclusion is justified without much argument (e.g. Dahl, 1989, pp. 56, 126-7). In this chapter, I challenge the conventional wisdom. I argue that children, from around the age of twelve ought, morally, be enfranchised, and that their ongoing exclusion is unjust.⁸²

The argument developed over the following pages is an argument from *convergence*.⁸³ There are many different accounts of the justification of voting rights. I show that each of these accounts, when read in conjunction with the relevant evidence from developmental psychology, yields a positive requirement to enfranchise children from the age of twelve or so. Moreover, I show that attempts to modify or re-interpret such accounts so as to defend the exclusion of children tend to have unacceptably exclusionary consequences with respect to other social

⁸⁰ Some (e.g. Singapore and Malaysia) set the age as high as 21. A small number (e.g. Austria and Brazil) have lowered the age to 16.

⁸¹ In the 2010 Australian Election Study when asked "Do you think that the voting age in elections should be lowered to 16, or should it stay at 18?", 72% of respondents replied that it should definitely stay at 18, and 22% replied that it should probably stay at 18 (McAllister, 2012, pp. 5-8). The United Kingdom Electoral Commission found that 78% of people favoured keeping the voting age at 18 in 2004 (Commission, 2004).

⁸² I am not the first to challenge the orthodoxy. See Cook (2013), Goodin and Lau (2011), Harris (1982), Hart and Atkins (2011), Lau (2012), López-Guerra (2014, ch. 3), Merry and Schinkel (2016), Munn (2012a; 2012b), Peto (Forthcoming), and Schrag (1975; 2004).

⁸³ Schrag (2004) attempts a somewhat similar strategy. However, his discussion neglects several prominent approaches, as well as several significant objections.

groups. Arguments of this form are quite uncommon in democratic theory.⁸⁴ That, I think, is surprising. Arguments from convergence have at least two significant, distinctive virtues it is worth briefly setting out.

By far the most important virtue of such arguments is *epistemic*. There are – as we shall see – several conflicting approaches to the justification of voting rights on offer in democratic theory. Powerful arguments have been marshalled for and against each.⁸⁵ Some uncertainty over which is correct is both rationally appropriate and inevitable. We can, at most, be as confident in the soundness of an argument rooted in any one approach, as we are in the approach itself. Arguments from convergence, on the other hand, ought to inspire a substantially higher degree of confidence since, if successful, they demonstrate that one should accept the claim over which the diverse theoretical approaches converge, regardless of one's degree of confidence in each of the underlying theoretical approaches.

A second, related virtue is *robustness*. Arguments from convergence do not stand or fall with any particular theoretical approach. That is because the success of such arguments does not depend upon the soundness of any particular approach. The conclusion holds, whichever of the underlying theoretical approaches turns out to be right.

In what follows, then, I stay neutral as to whether any particular theoretical approach we shall discuss is correct. I defend only the following two, much weaker claims: (a) that proponents of each of the accounts we shall discuss have powerful reasons to endorse the enfranchisement of children from around the age of twelve, and (b) that this convergence is, in itself, a powerful reason to accept that the *status quo* disenfranchisement of such children is, in fact, unjust.

The chapter is in four sections. Section one discusses instrumental accounts. I argue that the goods to which proponents of these views have characteristically appealed would be better promoted by the enfranchisement of minors than by their

⁸⁴ They are a little more prominent in other areas of political theory (Carens (1987), for example, famously employs such a strategy in defence of open borders), and widespread in other fields – e.g. applied ethics.

⁸⁵ See Kolodny (2014a) for an excellent critical survey.

continued exclusion. Section two discusses non-instrumental accounts. I argue that the values to which proponents of these accounts characteristically appeal in justifying universal adult suffrage also ground claims to enfranchisement for many children. Both sections also engage with a wide range of objections to child enfranchisement. Section three briefly discusses some practical implications. Section four concludes.

4.1. Instrumental Approaches

Instrumental approaches seek to justify the extension of voting rights to citizens by appeal to the values that democratic decision-making characteristically promotes, rather than any values embodied in democratic institutions themselves. The two most prominent instrumental approaches are the epistemic approach, and the participatory approach. Let us consider each in turn.

4.1.1. The Epistemic Approach

Epistemic democrats (e.g. Estlund, 2008; Landemore, 2013b) argue that democratic institutions, including voting rights, are justified because they are, relative to feasible/reasonable alternatives, likely to reliably produce the highest-quality political decisions, as judged by some procedure-independent standard. The quality of democratic decisions is a function of democracy's performance at three tasks – devising policy options, choosing between those options, and revising policies over time. I argue that enfranchising minors might plausibly lead to improvements at all these tasks and, therefore, to higher-quality decisions. Epistemic democrats, then, have reason to favour the enfranchisement of children.

The enfranchisement of minors might, first, lead officials and candidates to generate higher-quality options. Generally, the extension of the franchise to previously excluded groups gives rise to powerful incentives for parties to account for the interests of that group, so as to promote their chances of electoral success. As we discussed in chapter two, numerous empirical studies have demonstrated a positive connection between the enfranchisement of previously disenfranchised groups – e.g. women (Aidt and Dallal, 2008), the unwealthy (Abou-Chadi and Orłowski,

2015), and African Americans (Husted and Kenny, 1997) – and an increased allocation of resources to those groups by government, for example. We might plausibly hope, then, that the enfranchisement of children would give political leaders more powerful incentives to protect and promote children’s interests. There are many ways in which politicians might seek to do so. They might, for instance, be inclined to allocate a greater proportion of social resources to children, promoting their welfare in an absolute sense, and redressing some of the substantial inequalities that presently obtain between the generations.⁸⁶

The enfranchisement of children might, secondly, improve the ability of the electorate to *choose between* these options. The Condorcet Jury Theorem – as generalised by List and Goodin (2001) – shows that where individuals (1) are on average more likely to vote for the right option than any other, and (2) make their decisions independently, the probability of the group selecting the right option rapidly approaches 1 as the size of the electorate increases.⁸⁷ The Condorcetian argument for universal adult suffrage is obvious – the larger the electorate, the greater the epistemic competency of the democratic system, other things equal. But the jury theorem, as Goodin and Lau (2011) and Olsson (2008) point out, also lends support to the enfranchisement of minors. Provided that the addition of children does not mean that, on average, the electorate is more likely to vote for the wrong answer than the right answer, the group will still be virtually certain to choose correctly.

Goodin and Lau (2011, p. 161) offer the following example. Suppose an electorate of 100,000,000 adults on average 0.52 likely to select the correct answer in a two-option choice. Suppose we were to enfranchise 20,000,000 children. These children would have to have an average competency of 0.4 or worse for the electorate’s average competency to fall below 0.5. It hardly seems likely that children are *that* much worse than adults on average. Children would virtually have to know the right answer, and deliberately vote against it. Much more likely is that their addition will either marginally improve the competency of the electorate, in which case there is a

⁸⁶ In many nations, for example, a higher proportion of children are in poverty than adults (Brewer et al., 2011).

⁸⁷ In this context, selecting the right option would amount to selecting the item on the agenda which, if adopted, would be morally best all-things-considered.

clear Condorcetian argument for their enfranchisement, or have no significant impact, in which case Condorcetian considerations militate neither for, nor against, their enfranchisement.

Moreover, evidence from various civics programmes which involve ‘mock’ political participation (e.g. Kids Voting USA) appear to show that such programmes also increase adult turnout, as well as adults’ consumption of political news and levels political knowledge (Linimon and Joslyn, 2002; McDevitt and Chaffee, 2000). We might, as such, hope that allowing children to participate for real has similar effects. This, by the lights of the jury theorem, should also promote the epistemic competency of the electorate – both by increasing the absolute size of the electorate, and its average competency.

Finally, enfranchising children might improve democracies’ abilities to assess the merits of, and revise, existing policies. Following Anderson (2006) and Putnam (1990), we can think of democracies as engaged in an ongoing process of ‘hypothesis testing’ as to the extent to which various policies promote the common good. Democratic feedback mechanisms (deliberation, voting, and so on) provide data to be integrated into an assessment of policies, on the basis of which reforms might be implemented. Universal suffrage is justified, on such accounts, as a means of gathering the most extensive possible data-set. There is every reason to think that minors’ contributions might well be valuable in this respect. Minors are uniquely situated with respect to government policy. *Inter alia*, they are subject to substantially more governmental control, liable to experience the effects of changes in social policy to deal with (or fail to deal with) problems with longer time-horizons (e.g. climate change) in a way many adults will not, and have distinctive interests given their more limited capacities.⁸⁸ They might, as such, be expected bring a distinctive perspective to the ongoing assessment of social policies. Enfranchising children would be a valuable means of capturing this data, both because their votes would be weighted alongside those of adults, but also because it would give more children reason to participate in deliberation (or, at least, political discussion) with other citizens. The result should be a more complete assessment of the merits of

⁸⁸ For these reasons, the enfranchisement of children might also improve the cognitive diversity of the electorate. On the epistemic value of cognitive diversity, see Landmore (2013b).

existing social policies, and a more informed reform agenda. For all these reasons, enfranchising minors might be expected to promote higher-quality decision-making.

One rather alarmist line of objection, however, would hold that the enfranchisement of children might lead to disastrous outcomes. Politicians might propose doubling the length of school holidays, for example, in a bid to win children's votes. Yet, since politicians will still have to compete for the support of adults who will partially vote with children's interests in mind, outcomes of this sort seem very unlikely.

Hinrichs (2002) offers a more challenging critique. The epistemic benefits of child enfranchisement rely upon a sufficient proportion of the youth *exercising* the franchise. No politician, for example, will try and capture the 'youth vote' if the number of likely young voters is too small to make a meaningful difference to their electoral prospects. Moreover, evidence suggests that minors will not participate in great numbers. Children, on the whole, are less interested in politics than adults (Chan and Clayton, 2006, pp. 542-6; Hart and Atkins, 2011, pp. 207-12). In German municipal elections in which 16-17 year-olds have been enfranchised, turnout among 16-17 year-olds is lower than that of all other age groups (Hinrichs, 2002, p. 41). 16-17 year-olds in Austria (which lowered the voting age to 16 in 2007) report the lowest overall average levels of intended voter turnout in federal elections of any age-group (Wagner et al., 2012, pp. 373, 376-8). The epistemic benefits of child enfranchisement, then, seem unlikely to materialise.

Such pessimism is misplaced. Turnout is affected by a wide range of highly variable factors (Blais and Dobrzynska, 1998). We must therefore be cautious extrapolating from this limited set of cases to likely rates of youth participation across the board. Indeed, there are examples which point in the opposite direction. The UK Electoral Commission (2014, p. 64) reports that, in the 2014 referendum on Scottish independence, turnout amongst 16-17 year olds (75%) was significantly *higher* than turnout amongst 18-24 year-olds (54%). Zeglovits and Aichholzer (2014) found that turnout among 16-17 year-olds was not significantly lower than the overall average in a study of recent Austrian municipal elections.

Moreover, even if rates of youth participation are low, they may nevertheless be significant *enough* (in tight elections, at least) to give politicians incentives to appeal to that proportion of the youth that is likely to turn out. There are also institutional means of promoting youth participation – compulsory voting, for instance. In any case, even if participation is as minimal as critics of child enfranchisement allege it is likely to be, the epistemic consequences of enfranchising children will simply be *neutral*, making no difference for good or ill. In that case, whether children ought to be enfranchised will be a matter of weighing the other values at stake. These, I will argue throughout the rest of the paper, overwhelmingly favour the enfranchisement of children.

4.1.2. The Participatory Approach

Participatory democrats point out that voting rights also promote goods (e.g. valuable personal qualities) via the participatory opportunities they afford to citizens. These theorists – most notably Mill (1861) and Pateman (1970) – have frequently appealed to such goods as part of the justificatory basis for voting rights. A number of these arguments, I suggest, lend support to child enfranchisement. Let us consider three such arguments.

First, 'buy-in'. Several democratic theorists have argued that citizens are more likely to take collective decisions to be legitimate where they have had opportunities to contribute to the making those decisions, and will have opportunities to contribute to the ongoing process by which those decisions are to be revised (e.g. Gutmann and Thompson, 2004, p. 10).⁸⁹ Disenfranchised minors have little reason to feel this way, since they are *denied* such opportunities. Enfranchising minors, then, might be expected to increase the proportion of persons who accept the legitimacy of the collective decisions to which they are subject.

Second, the expression of political attitudes. Voting is an opportunity for one to express one's political attitudes. The fact that citizens continue to vote in large

⁸⁹ One might be sceptical as to whether this (or indeed, any of the other) goods touted by participatory democrats are really worth promoting. I take no position on that, here. My only claim is that participatory democrats, who do endorse these goods, have reason to endorse the enfranchisement of children – not that the participatory approach itself is right or wrong.

numbers, despite the fact that they are virtually certain to make no difference to the outcome, suggests this an opportunity adults value for its own sake (Brennan and Lomasky, 1993, ch. 10). The majority of minors have political attitudes (Easton and Hess, 1962), and more might develop them were they to be enfranchised. They might, as such, value the opportunity to express these attitudes at the ballot box, just as adults do.

Finally, valuable personal qualities. Many have sought to defend voting rights on the grounds that opportunities for political participation promote valuable personal qualities like public-spiritedness, self-esteem, the ability to assess the merits of competing proposals, engage in moral thought and argument, and so on (e.g. Mill, 1861, ch. 3; Pateman, 1970; Rawls, 1971, p. 234). If political participation is a means of promoting such attributes for adults, there is no reason why they might not perform a similar function for many (though, of course, not all) children.

The *age* at which the instrumentalist should favour the enfranchisement of children depends upon empirical evidence as to the likely effects of enfranchising different age-groups. For the most part, direct evidence is unavailable. There is reason to think, however, that an age of around twelve would be appropriate. Evidence from developmental psychology suggests that children of this age have the capacity to engage in pro-social behaviour, reason in terms of abstract moral principles, and make relatively sophisticated judgements of distributive justice (Eisenberg et al., 2007, pp. 654-62; Turiel, 2007, pp. 824-5). Children of such an age might therefore benefit from opportunities to develop and exercise these capacities through the political process. Political socialisation research shows that children begin to develop rudimentary political attitudes in around the second grade, with more sophisticated attitudes directed towards more abstract concepts – fairness, democracy, voting, freedom, and so on – emerging (again) around the age of twelve (Easton and Hess, 1962, pp. 237-8, 245). Presumably, such children would derive utility from the expression of those attitudes in much the same way as adults.

The epistemic consequences of enfranchising different age-groups are harder to predict. Yet, it again seems likely that children of around twelve would have the capacity to make some positive contribution, because the requirements for doing so

are quite undemanding. They need only be willing to vote (in large enough numbers) and have the capacity to recognise some of the differences between the parties for candidates to have incentive to appeal to their interests. They need only be, on average, more likely to select the right answer than any alternative to contribute to democracy's ability to choose correctly between policy proposals.⁹⁰ And they need only be able to express their attitudes with respect to prevailing government policies to contribute to the democratic assessment of those policies. If, as seems likely, a child of twelve can perform at least *one* of these tasks, then their inclusion might potentially improve democracy's epistemic performance.

Any instrumentalist case for enfranchising children must also account for the *costs* of doing so. In this vein, Beckman (2009, pp. 114-9) has argued that imposing the responsibilities of voting upon children would undermine their fundamental interests. Children, he asserts, have fundamental interests in growth and development, and therefore must enjoy (Beckman, 2009, p. 116): "...both playful challenges and protection from the demands of adult life." Voting responsibly requires citizens to gather information and deliberate over the options on the agenda. Children would likely find doing so both psychologically burdensome and time-consuming, leaving them without the space or inclination to play, potentially undermining their development and future autonomy.

Beckman's objection invites two responses. First, minors for whom voting would be unacceptably costly will not necessarily bear those costs because (absent compulsory voting) not all children will vote. Secondly, and more importantly, voting does not seem likely to *constitute* an unacceptable burden for most children. Adults do not generally find the responsible exercise of the franchise burdensome. Things need not be all that different for children. Children might be required to spend a greater amount of time than adults gathering information if they are to vote responsibly, since they are likely to possess less political knowledge. Yet there are obvious institutional means available for mitigating these costs. Civics education

⁹⁰ Children might fail to meet this standard in two ways. First, they might vote randomly, in which case we should expect their votes to distribute evenly over the options, making no difference to the probability of the right answer emerging (Goodin, 2007, pp. 58-9). Secondly, they might be *worse* than random. This will be of concern only in the very improbable instance in which there is a very large number of children who are very much worse than average adults.

could easily be integrated into existing school curricular.⁹¹ The informational shortcuts upon which many adults rely in order to mitigate their own informational shortfalls would also be perfectly accessible to minors (Lupia and McCubbins, 1998).

In any case, persons must presumably incur the costs of gathering this information at *some* time in their lives.⁹² It is unclear why it is better that people incur those costs as adults. Indeed, it might be better to do so at a younger age where individuals (in most cases) have fewer competing responsibilities. Whatever costs children might suffer are as such likely to be very minor (and temporary, since elections are relatively infrequent). They must also be balanced against the benefits likely to accrue to children who participate. As with almost all policy choices, the enfranchisement of children may leave *some* worse off. But, for the reasons I have set out in this section, the costs to this group are likely to be heavily outweighed by the benefits overall. Instrumentalists, I conclude, have powerful reasons to favour the enfranchisement of children.

4.2. Non-instrumental Approaches

Proponents of non-instrumental approaches argue that democratic institutions (including voting rights), in themselves, are among the requirements of respect for some value or other, independent of the results they realise. There are two main approaches in the literature – liberty-based, and equality-based. Proponents of both kinds of approaches, I shall argue, have reason to endorse the enfranchisement of children.

4.2.1. Liberty

⁹¹ Numerous studies of civics programmes such as Kids Voting USA (e.g. Meirick and Wackman, 2004; Simon and Merrill, 1998) have been shown that such programmes can boost students' levels of civic knowledge, as well as their consumption of political news.

⁹² One might object that many children *won't* acquire information. This is perfectly true. I doubt, however, that it constitutes grounds for disenfranchisement. Many adults fail to acquire basic political information. Few would be willing to accept, however, that such persons' claims to enfranchisement are thereby undermined.

There are two principal liberty-based approaches in the literature: neorepublican approaches, and positive liberty approaches. Neorepublicans such as Philip Pettit (1997; 2012) conceive of liberty as the absence of subjection to the arbitrary, uncontrolled will of others; or *nondomination*. A dominates B where A has the capacity to interfere with B in a manner B does not control. All governments visit interference upon their citizens. In order to ensure that that interference does not amount to domination, then, citizens must enjoy control over government (Pettit, 2012, ch. 3-5). The franchise is crucial in this respect, being the most basic means by which citizens can, in concert with others, exert such control. It also enables other forms of control. Governments have incentives to take protestors seriously where their actions threaten to change citizens' voting behaviour, for example.

Positive liberty approaches are similar in many respects. Liberty, on such accounts, consists in self-governance – "...being one's own person, directed by considerations, desires, conditions, and characteristics that are not simply imposed externally on one, but are part of what can somehow be considered one's authentic self" (Christman and Anderson, 2005, p. 3). There are many positive liberty approaches in the literature (e.g. Gould, 1988; Gutmann, 1993; Hanisch, 2013; Jacob, 2015; Philpott, 1995). These vary widely, but these details need not concern us, here. The general thrust of them all is much the same: control over the terms of social cooperation, as regulated by the political institutions to which we are subject, is said to be *constitutive* of one's individual autonomy, an essential means of exercising control over oneself. The franchise, in turn, is thought to be an essential means of *exercising* such control.

Proponents of both liberty-based accounts have reason to endorse the enfranchisement of a substantial proportion of the youth. In the case of children around 16 and over, the argument for doing so is simply that children of that age, by the lights of the theories under consideration, have claims to liberty in the political domain as legitimate as most adults'. On standard accounts, agents have claims to liberty in some domain if and only if they possess the capacities necessary for making meaningful choices in that domain. This obviously rules out very young children. But the matter grows more complex as children mature. Numerous psychological studies show, for example, that minors of around 15 or 16 years of age

possess adult-like cognitive capacities for decision-making. On the other hand, the development of psychosocial characteristics such as impulse-control, temperance, and the capacity to resist peer pressure persists well into adulthood; well beyond the age at which we generally think persons have claims to have their liberty respected (and, certainly, beyond the age at which persons gain the right to vote in *status quo* democracies).⁹³

Yet, complexity notwithstanding, there are important reasons for thinking that average 16 year-olds do indeed possess capacities sufficient to ground claims to liberty in the political domain – and therefore, by the lights of the accounts under consideration, to enfranchisement. Steinberg et al. (2009, pp. 592-3) point out that the capacities necessary for mature decision-making vary according to context. 16 year-olds may lack the capacity to make meaningful decisions in contexts where they, for instance, face heavy peer pressure, given their limited psychosocial development. On the other hand, in decision-contexts that allow for sustained reflection, time to consult others for advice, and so on, minors may well be as capable of making mature decisions as adults. This, to some extent, is reflected in the law, where the ‘mature minor’ doctrine recognises the capacity of suitably well-informed minors to give consent to medical procedures, for example – these characteristically being decisions that allow time for minors to gather information, consult with others and so on (Steinberg, 2013).⁹⁴

There is every reason to think that sufficiently mature minors will generally have sufficient capacities in the *political* domain.⁹⁵ Modern election campaigns and media coverage expose persons to a wide range of perspectives, and afford substantial time for deliberation. We are not called upon to make voting decisions impulsively. Even if, then, 16 year olds do not possess sufficient psychological maturity to ground claims to liberty across all domains of life, they do at least possess capacities

⁹³ Overviews of the relevant evidence may be found in Kuhn and Franklin (2007, pp. 975-82), Scott et al. (1995), Steinberg et al. (2009), and Steinberg (2013, p. 263).

⁹⁴ See also Munn (2012a; 2012b).

⁹⁵ Hart and Atkins (2011, pp. 219-20) cite similar evidence in defence of the idea that 16 and 17 year olds are capable of ‘responsible’ voting.

sufficient to ground such claims in the *political* domain.⁹⁶ That ought to be sufficient, by the lights of the accounts under discussion, to ground claims to enfranchisement.

There are also good reasons for proponents of liberty-based approaches to favour the enfranchisement of children under 16. In the first, many children below the age of 16, too, will have capacities sufficient to ground liberty-based claims to enfranchisement. Many, of course, will not. However, younger children do have liberty-based claims to opportunities for the *development* of these capacities (Feinberg, 1980). The opportunity to vote might well prove a valuable in this respect.⁹⁷ As we have argued already, allowing children from the age of 12 or so the opportunity to participate in the political process might aid in their development of important decision-making skills – the ability to balance competing moral claims, assess the plausibility of fact-claims, and so on. Of course, these benefits will not obtain for all such children. Some will be too immature, others simply uninterested. But that is not a reason not to extend such children the *opportunity* to vote. The potential benefits for children who do vote might be substantial. And, as we have argued already, the costs to those who do not vote, or do not benefit from voting, are likely very minor, or non-existent.

One might object, at this point, that even if children have liberty-based claims to enfranchisement, we have powerful moral reason to paternalistically override such claims. Children cannot generally be relied upon to make sensible decisions in their own interests. Younger children lack the necessary capacities. Older children with sufficient capacities will often lack necessary information. Society, then, is justified in restricting children's choices (e.g. limiting their access to alcohol and tobacco), given the probability that children will otherwise cause themselves harm. Perhaps such considerations also apply in the voting case. Children are ill-equipped to assess the probable impact of political proposals upon their interests, and are liable to

⁹⁶ Opponents of child enfranchisement might demand a higher standard of psychological competency. The trouble with this, as Lau (2012, pp. 861-5) points out, is that doing so will tend to entail disenfranchisement of many adults (e.g. elderly persons whose capacities are in decline).

⁹⁷ Cook (2013, pp. 446-50) argues, relatedly, that since voting might develop children's capacities, age-based denials of the franchise constitute failures of appraisal respect for children. Cook's argument is unconvincing, however. Appraisal respect is a matter of the respect we owe to persons in virtue of the capacities they *have* (Darwall, 1977, p. 38). Cook's argument, however, appeals to the idea that children might *develop* these capacities through enfranchisement, which would seem to imply that they do not yet possess such capacities.

make bad decisions, in consequence. We are therefore justified in denying children the vote until they can reasonably be expected to make sound decisions in their interests.⁹⁸

However, notice that in typical cases of justified paternalistic interference, agents are deprived of the ability to make some decision (e.g. to purchase harmful substances) on the grounds that they would be likely to cause harm to themselves if allowed to do so. Voting differs crucially from these cases. Individual voters do not decide the *outcomes* of political processes. The probability of any voter casting a decisive ballot is always asymptotically close to zero (Brennan and Lomasky, 1993, ch. 4). It is hardly as though, in preventing any given child from voting, we thereby prevent that child from subjection to some harm they would otherwise have suffered. Nor is it plausible that disenfranchisement prevents minors considered collectively from being subjected to some harm they would otherwise have suffered. As our discussion of the epistemic approach showed, the enfranchisement of minors might plausibly be expected to yield higher-quality decisions with respect to minors' interests (or, at worst, to make no difference).

Moreover, the appeal to paternalism entails unacceptable conclusions in the adult case.⁹⁹ Many adults are deeply ignorant on political matters. Lau et al. (2008, p. 402) estimate that between 20% and 30% of American voters, on average, vote 'incorrectly' – i.e. for candidates they would not have supported had they been fully informed – in US Presidential elections, for example. If the appeal to paternalism licenses depriving children of the franchise, it would also seem to license depriving these adults of the franchise, since they too will predictably make low-quality voting decisions with respect to their interests. No democrat, surely, can accept that conclusion.

I conclude, then, that proponents of liberty-based justifications of democracy have reason to favour the enfranchisement children from around the age of twelve.

4.2.2. Equality

⁹⁸ Of course, there is also the question of children's capacity to make sound decisions with respect to *others'* interests. I deal with this issue below.

⁹⁹ Harris (1982, pp. 36-45) makes a similar point.

Equality-based approaches come in three general varieties – distributive, expressive, and social. Let us consider each, in turn.

4.2.2.1. The Distributive Approach

Proponents of the distributive approach (e.g. Brighthouse, 1996; Christiano, 2008) hold that the franchise is a valuable good to which all adults citizens have positive, equal claims. Distributive fairness, therefore, requires an equal distribution of the franchise among all adults. There is every reason to think that the distributive approach *also* requires the enfranchisement of children.¹⁰⁰ Even very young children have claims to goods in general (e.g. food, shelter, and education). Principles of distributive fairness clearly apply to the distribution of these goods. It is obviously unjust that children of poorer families generally have worse educational outcomes than children of wealthier families, for example (Schlee et al., 2009). If minors have claims to enfranchisement equal to those of adults, then, distributive fairness will require that minors be enfranchised.

Proponents of the distributive approach ground adults' claims to the franchise on the interests enfranchisement serves. We have mentioned most of these already. Enfranchisement, *inter alia*, is thought to contribute to individuals' autonomous agency, to be a resource individuals can draw on to protect and promote their other interests,¹⁰¹ to be a valuable opportunity for the expression of one's political attitudes, and to promote the development of valuable character traits. Not all minors have the capacity to enjoy these goods, and so not all minors have claims to enfranchisement. But there is no reason to suppose this to be true of all children. Indeed, as we have already argued, children from around the age of 12 or so might reap many of the benefits of democratic participation that proponents of the distributive view claim ground adults' claims to enfranchisement. This suggests that such children *also* have claims to enfranchisement. It follows, straightforwardly,

¹⁰⁰ For another distributive argument for enfranchising children, see López-Guerra (2014, ch. 3).

¹⁰¹ Mill (1869, pp. 526-7) famously advocated for the enfranchisement of women on the grounds that it was vital means of protecting their interests. Christiano (2008, pp. 88-95), similarly, appeals to the need to correct for others' cognitive biases in political decision-making.

that children have claims of distributive equality to be enfranchised on an equal basis with adults.¹⁰²

Three responses suggest themselves. First, Weale (1999, p. 154) argues that age-based discrimination does “...not discriminate unfairly among persons or groups, since [it falls] evenly on everyone in the normal course of life. In this sense [it is] compatible with the requirements of political equality.”¹⁰³ This argument, however, fails to explain why only *children* can permissibly be excluded from the franchise on that basis. The costs of a voting age of 45 would also fall evenly on everyone in the normal course of life.¹⁰⁴

Perhaps Weale has a narrower claim in mind: since age-based discrimination does not target any particular social group, it is not objectionably discriminatory in the way that disenfranchising women or African Americans was, for instance. That is surely right. But it still begs the question of why there should be such discrimination *at all*. Distributive fairness requires that claims of equal strength, where possible, be satisfied equally (Broome, 1990-1). Age-based discrimination avoidably creates inequalities in claim-satisfaction between adults and children. It is, as such, distributively unfair, even if it is not unfair in the same way as the race or gender-based disenfranchisement.

Second, Spitz (1975) argues that children lack claims to enfranchisement because they do not contribute to the community’s resource stock, the distribution of which is regulated by the political process. Yet Spitz’s notion of ‘contribution’ is ambiguous. A narrow reading would understand Spitz’s argument in economic terms. Citizens, on this view, contribute to the community’s collective resource stock by engaging in economic activity and, thereby, contributing to public goods via taxation. This interpretation of the argument proves too much, insofar as it would unacceptably legitimate the disenfranchisement of many adults. Persons with physical disabilities, for example, are often unable to contribute in this narrow sense, being

¹⁰² Of course, not *all* children will benefit in this way. That, however, is just as true of a great many adults (e.g. those who never *exercise* the franchise) – and is plainly *not* sufficient grounds for disenfranchisement.

¹⁰³ See also Cowley and Denver (2004, p. 61).

¹⁰⁴ There are also important, general reasons to be skeptical of appeals to long-run equality of this sort. See McKerlie (1989) and Temkin (1993, ch. 8).

unable to take up the employment opportunities their societies make available. Disenfranchising such persons, however, would surely be deeply unjust. One might, then, interpret Spitz more broadly, so as to allow the production of various non-economic goods to count as contributions of the relevant kind. Persons might be said to contribute to the good of public order by complying with the law, for example. The trouble, here, is that most children *do* contribute in this sense in many ways (e.g. by complying with the law). Read narrowly, then, Spitz's argument is indefensibly exclusionary. Read broadly, it fails to justify the exclusion of children.

Finally, one might respond that the enfranchisement of children would *create* distributive unfairness. Parents would be able to substantially determine how their children would vote. Enfranchising children, then, would effectively amount to giving additional votes to parents without any compensating increase in the political power of childless adults. Much might be done to mitigate this worry (e.g. civics education emphasising the need for children to make such decisions independently). Still, I concede that it is simply inevitable that parents will exercise substantial influence over their children in many cases. We should be reluctant to accept that this justifies the *disenfranchisement* of children, however. First, this line of argument cannot possibly show that the disenfranchisement of children is not unjust from a distributive perspective. All it can show is that distributive unfairness of *some* kind is inevitable, however.¹⁰⁵ Secondly, and more importantly, this line of argument proves too much. There is abundant evidence that parents often transmit their own partisan affiliations to their *adult* children, and that children often maintain those political preferences well into later life (Jennings et al., 2009). This line of argument, then, threatens to legitimate the disenfranchisement of persons well *above* the age of eighteen – a conclusion, once again, no democrat can accept.

4.2.2.2. Expressive Approaches

A number of philosophers have argued in favour of democratic institutions on expressive grounds (e.g. Beitz, 1989, ch. 5; Griffin, 2003, pp. 118-21; Waldron, 1999, pp. 113-4, 238-9). On such approaches, each of us has an interest in being *publicly recognised* as equals, with the capacity to contribute equally to collective

¹⁰⁵ The choice we face is whether unfairness ought to be visited upon children, or childless adults.

judgements as to how society's collective affairs ought to be structured. It is only by giving each an equal say in the political process that this interest can be satisfied equally for all citizens. No-one seriously denies that children are of equal moral significance to adults. Schrag (2004, pp. 367-8) has argued that, as such, expressive approaches straightforwardly entail a requirement to enfranchise children, and that their ongoing disenfranchisement constitutes an objectionable failure of equal recognition.¹⁰⁶

I think Schrag is right. However, the matter is considerably more complex than Schrag acknowledges. Opponents of child enfranchisement (generally) hold that children lack the *capacity* to exercise the franchise, and ought to be excluded on that basis. Discriminating between persons on the basis of reasonable judgements as to their capacities does not usually constitute a failure to recognise persons' equal moral standing. A secondary school looking to hire a mathematics teacher might refuse to consider applicants without tertiary qualifications in mathematics, without thereby derogating the moral standing of those without such qualifications. The school's policy merely reflects a legitimate judgement as to the qualifications necessary to teach mathematics. The same, one might argue, holds in the voting case. Age-based discrimination merely reflects a legitimate judgment as to children's (general) incompetency to exercise the franchise.¹⁰⁷ It does not derogate their equal moral standing.

Now, the idea that incompetency justifies children's exclusion from the franchise is the most common claim made by opponents of child enfranchisement (Chan and Clayton, 2006; Christiano, 2008, pp. 116-30; Clayton, 2006, ch. 5; Cohen, 1978; Dahl, 1989, pp. 126-7; Hinrichs, 2002; Spitz, 1975; Weale, 1999, p. 154). Unfortunately, most are unclear over what 'competency' amounts to. Clayton (2006, ch. 5) is an important exception. He argues that voting involves exercising power over others, and that since we have duties to treat others in accordance with a reasonable conception of justice, we ought only to enfranchise those whom we can reasonably

¹⁰⁶ See also Archard (2004, pp. 98-105).

¹⁰⁷ To be clear, the argument (in its most plausible form) is not that children are incompetent to exercise the franchise just in virtue of being children. It is, rather, that the exclusion of children is not objectionably arbitrary, because age is the best available *proxy* for the attributes necessary to vote competently (Chan and Clayton, 2006, p. 539-40; Clayton, 2006, pp. 185-7).

expect to vote in accordance with such a conception. Minors are not generally competent in this sense. They may therefore be justifiably disenfranchised.

Clayton's conception of competency, however, is much too strong. There are many adults whom we can easily identify as being almost certain not to vote in accordance with reasonable conceptions of justice. Persons with extremist political views, for instance (e.g. Klansmen) presumably vote in accordance with profoundly unreasonable conceptions of justice. Others do not vote in accordance with any conception of justice, but rather in accordance with their interests. No democrat can reasonably endorse the in-principle permissibility of disenfranchising such persons, let alone their actual disenfranchisement.

Of course, enfranchising the 'unreasonable' gives rise to the risk of seriously unjust political outcomes. Yet there are institutional means for managing these risks that are standardly invoked in discussions of adult suffrage. The constitutional entrenchment of individual rights, for example, is a powerful means of limiting unreasonable voters' capacities to impose injustices upon the wider community (Dworkin, 1996). It is unclear why the additional step of disenfranchisement is either necessary, or appropriate, in the case of children.

Secondly, and more importantly, it is unclear whether all minors really *are* incompetent in Clayton's sense. As we have already noted, research from developmental psychology suggests that many children have the capacity to engage in moral and political thought. Empathy begins to emerge in children as young as 12-18 months (Eisenberg et al., 2007, pp. 654-62). Pro-social behaviours continue to develop through early childhood and into adolescence, with the capacity to engage in abstract moral reasoning oriented around principles beginning to be present in late elementary school/early high school students. By age 11, children have the capacity to make quite sophisticated judgements of distributive fairness, showing the ability to account for factors such as desert, talent, advantage and disadvantage (Turiel, 2007, pp. 824-5).

There is some evidence that children characteristically possess less political *knowledge* than adults (Chan and Clayton, 2006, pp. 542-53), which perhaps might

hinder their ability to exercise the franchise responsibly. This, too, is controversial, at least in the case of older children (Hart and Atkins, 2011, pp. 207-14). But, whatever the truth of the matter, there are obvious institutional remedies for this concern we have already discussed. Moreover, it is likely that the degree of ignorance children exhibit about politics is partially a function of their exclusion. Extending the franchise to children would give those with an interest in politics reasons to become more informed (perhaps so as to be able to justify their political behaviour to others). Of course, not all children will be interested enough in politics to bother acquiring the relevant information. Yet, presumably, such children are also unlikely to vote in any case, and so pose little threat to their fellow citizens' interests.

Other notions of competency fare little better. Christiano (2008, pp. 128-30) holds that one must be capable of "elaborating, reflecting on, and revising ideas about justice."¹⁰⁸ Yet the evidence referred to in the previous paragraph suggests that many children *do* possess capacities of this kind. We might suggest that competency involves the ability to make autonomous choices in one's interests.¹⁰⁹ But, as we have noted, concern for autonomy lends *support* to the enfranchisement of children. Finally, we might construe competency as the ability to enjoy the goods of enfranchisement. But, again as we have already argued, many minors are competent in this sense, too.¹¹⁰

The appeal to competency fails to vindicate the blanket exclusion of children. Many children might reasonably object, then, that their electoral exclusion constitutes a failure to recognise their equal moral standing in the political domain, rather than a legitimate judgment as to their capacities to exercise the franchise.

4.2.2.3. The Social Equality Approach

Our final egalitarian approach appeals to the value of social equality. The central assertion of recent work in so-called relational egalitarianism is that equal respect for persons requires that they stand in relations of social equality (Anderson, 1999; Scheffler, 2003). Kolodny (2014b, pp. 292-9) offers the best worked-out account, on

¹⁰⁸ For other criticisms of Christiano, see Schrag (2004, pp. 371-3).

¹⁰⁹ Cohen (1975) might be interpreted as gesturing towards such a view.

¹¹⁰ See also López-Guerra (2014, ch. 3).

which relations of social equality require the absence of asymmetries in power, *de facto* authority, and consideration. Inequalities in political influence constitutively involve asymmetries of power, authority and consideration – and therefore amount to objectionable social inequalities.¹¹¹ Social equality, then, requires that citizens enjoy equal opportunities for political influence.

I think that such considerations also militate in favour of the enfranchisement of children. Children certainly do seem to have claims against being treated as others' social inferiors. A twelve-year-old victimised and socially excluded on the basis of their gender identity certainly seems to be wronged by being placed in a position of social inferiority. If social equality constitutively requires equal opportunities for political influence, and children have claims to be treated as social equals, then it is hard to escape the conclusion that they have claims to enfranchisement. The precise *age* at which children acquire such claims is hard to know, because it is unclear quite what relational egalitarians take claims of social equality to be grounded in (aside from citizens' equal moral standing). But it certainly seems (as our example demonstrates) at least that children from the age of twelve or so do intuitively have such claims.

One might object that this entails unacceptable conclusions in other domains. Asymmetries in power, authority, and consideration are essential to parent-child relations, for example. Surely, however, parent-child relations are not unjust. This, in turn, shows that claims of social equality hold only between adults, and that children, therefore, have no claim to enfranchisement on such views. This position, however, is arguably *even more* problematic, insofar as it entails that children are not wronged by being subject to objectionably inegalitarian forms of treatment, such as that to which gay and lesbian children are sometimes subjected in conservative communities. That, surely, is unacceptable.

A more nuanced response, then, might accept that children have claims to be treated as social equals, but hold that the requirements of social equality differ between children and adults. The mere fact, then, that disenfranchisement would violate adults' claims to social equality does not necessarily show that disenfranchisement

¹¹¹ I defend a similar view in chapter seven.

would violate children's claims of social equality. However, it is not enough to simply assert that social equality permits the disenfranchisement of children, but not adults. There must be some difference between children and adults in virtue of which these differential forms of treatment might be legitimate from the perspective of social equality. I see no way of ruling out the possibility that there might be such differences *a priori*. Yet we have now surveyed a very wide range of ways in which theorists have sought to distinguish between children and adults with respect to their claims to enfranchisement – the capacity to enjoy the goods of enfranchisement, capacities for autonomous decision-making, fittingness for paternalism, contribution to the community's resource stock, and psychological competency – and found all of them wanting. It is hard to see just what other grounds proponents of the exclusion of children might appeal to. In the absence of such a justification, we are obliged to conclude that if social equality requires that adults be enfranchised on equal terms, it requires the same thing for children.

4.3. Practical Implications

We have now surveyed all of the major, plausible accounts of the justification of voting rights, and seen that each entails that the blanket exclusion of minors from the franchise, at least from the age of twelve or so, is unjust. That suggests powerfully that their exclusion is *in fact* unjust. It does not follow immediately, however, that we should simply enfranchise everyone aged twelve and over. Social arrangements ought to be judged by their consequences all-things-considered. We cannot hope have to fully accounted for these from the armchair.

Nevertheless, I do venture two more modest claims. First, that there is no sound justification in principle for the exclusion of children from around the age of twelve and over. Secondly, that this gives us *pro tanto* reason to lower the voting age to twelve. One might challenge this second claim. Age-based discrimination inevitably involves failures to enfranchise some who, by the lights of all these accounts, have the moral right to vote. There are, after all, some precociously talented 10 year-olds. Why not – as Cook (2013) suggests – instead favour a system of universal capacity testing, under which these inevitable injustices might be avoided?

Yet capacity testing would entail a range of other costs. Those who fail such tests would likely suffer serious losses in self-esteem. The authors of such tests would enjoy enormous power over the citizenry given their capacity to substantially determine the composition of the electorate.¹¹² Capacity testing would also likely lead to outcomes skewed in favour of groups most likely to pass the tests; those who enjoy existing social advantage.¹¹³ We might avoid some of these costs by opting for a very modest test. Cook (2013) himself favours testing for little more than basic literacy and mental independence. But *this* would tend to overinclusion – 6 year-olds might pass, for example. It also threatens to exacerbate the damage to the self-esteem of those who fail. Surely it is more demoralising to fail a basic test than a demanding one. There are no perfect options in this space. It seems to me likely that age-based discrimination will have better consequences all things considered.¹¹⁴ A more determinate verdict, however, must await further empirical evidence.

4.4. Conclusion

No prominent account of the justification of voting rights licenses the blanket exclusion of children. Though critics of child enfranchisement sometimes raise legitimate concerns, their arguments do not characteristically justify the exclusion of children to anything like the extent that prevails under the *status quo*. A voting age of around twelve, I have argued, is much more defensible. No doubt this will strike many readers as radical. Yet radical conclusions cannot be simply dismissed as such. We should ask whether there is any basis upon which such conclusions might be resisted. I have argued, here, that no such basis exists.

¹¹² Such power is liable to be abused. Literacy tests were used to exclude African Americans in the South prior to 1965, for example.

¹¹³ Socioeconomic status is a strong predictor of political knowledge, for example (Althaus, 2003, pp. 14-7).

¹¹⁴ Though Munn's (2012a) proposal of coupling a lowered voting age with optional capacity testing for those below the age limit is also worthy of investigation.

5. A Citizens' Assembly for the Cognitively Disabled

A recent study of 92 democracies found that 76 restrict the voting rights of persons with cognitive disabilities (Beckman, 2014). Orthodox democratic theorists, though little-concerned with disability, are generally supportive of such restrictions.¹¹⁵ Robert Dahl (1989, pp. 124-31), for example, held that persons “proved to be mentally defective” can justifiably be excluded from the franchise, given their purported inability to vote competently. Judges and politicians, in defence of such restrictions, often appeal to the fear that the cognitively disabled are vulnerable to manipulation, and that their inclusion might therefore lead to distorted electoral outcomes.¹¹⁶

More recent work, however, has been critical of such arrangements. Appelbaum (2000) and Schriener et al. (1997, p. 89) point out that, in practice, the cognitively disabled are often disenfranchised on totally irrelevant grounds. Many states of the US, for example, disenfranchise persons placed under guardianship (Schriener et al., 2000, p. 442). Yet it is unclear, to say the least, whether persons placed under guardianship for an inability to manage their finances, for instance, have *thereby* been shown to be incompetent to vote. López-Guerra (2014, ch. 3) argues that many cognitively disabled persons are as capable of understanding elections, and deriving benefits from voting, as other citizens.¹¹⁷ Beckman (2014) argues that the complexities associated with determining whether persons have sufficient cognitive capacities to vote means that any attempt to exclude incompetent persons will inevitably also exclude competent persons. Barclay (2013), finally, argues that such restrictions publicly degrade the cognitively disabled, while yielding few, if any, benefits.¹¹⁸

¹¹⁵ Political theorists have historically had little to say on disability. More recent literature, however, has seen theorists take up issues such as the conceptual analysis of disability (Barnes, 2016), the moral standing of the severely disabled (Kittay, 2005), and how such persons' interests should ought to be accounted for in a wider theory of justice (Nussbaum, 2007).

¹¹⁶ See Beckman (2014) and Savery (2015) for an overview of such arguments.

¹¹⁷ Research is limited. However, one recent study lends support to López-Guerra's conjecture. Link et al. (2012) surveyed a number of persons with traumatic brain injuries, finding that such persons perform similarly to average college students on political knowledge and voter competency tests.

¹¹⁸ Related arguments are offered in Beckman (2009), Green and Klein (1980), Notes (1979), Nussbaum (2009), and Savery (2015).

I am inclined to agree with the critics of such restrictions. There are important general reasons to be suspicious of competency-based justifications for restricting the franchise (c.f. Lau, 2012). It is also hard to see quite which harms such restrictions are supposed to prevent. The best available evidence suggests that the cognitively disabled comprise around 1% of the population on average (McKenzie et al., 2016). Were such persons to be enfranchised, many would fail to vote through either disinterest or incapacity. Of those who do vote, many would likely vote competently. Of those who vote incompetently, some are likely to simply spoil their ballots. Those who do not are (presumably) likely to vote *randomly*. In that case, such persons' votes can be expected to distribute evenly over the options on the agenda, almost certainly making no difference to the end result (Goodin and Lau, 2011).

Worries about manipulation are also overstated. There is virtually no evidence of such manipulation occurring in any systematic way (Fiala-Butora et al., 2014, pp. 86-7; Redley et al., 2012, pp. 1028). Most recorded incidents involve political operatives entering facilities (e.g. nursing homes) in which large numbers of cognitively disabled persons are housed and attempting to manipulate such persons' completion of absentee ballots, a practice that could easily be outlawed.

However, objectionable though the disenfranchisement of the cognitively disabled might be, the solutions are relatively straightforward. Legal provisions disenfranchising such persons ought to be repealed, as has been done recently in Austria, Finland, and the UK, for example (Beckman, 2014, p. 226). Where necessary, assistance should be made available to cognitively disabled persons wishing to vote (Nussbaum, 2009, pp. 347-9).

Much harder, I suggest, is ensuring that democratic processes take adequate account of such persons' interests – an issue that has received very little attention from democratic theorists. In this chapter, I argue that there are structural factors in virtue of which elected officials tend to be systematically *under-responsive* to the interests of the cognitively disabled. These are unlikely to be ameliorated to any significant degree by the enfranchisement of such persons. These factors also lead to familiar injustices – the chronic under-resourcing of disability services, the

imposition of undue burdens upon unremunerated caregivers, and so on. Since these injustices are, at least partially, the product of the way in which democratic processes are structured, there is a *prima facie* case for considering how such processes might be reformed to ameliorate this state of affairs.

The main aim of this chapter is to argue that the best way of rendering democratic institutions adequately sensitive to the interests of the cognitively disabled would be to establish a citizens' assembly, to be tasked with reviewing existing policy arrangements, and proposing reforms to those arrangements to be put to the citizenry in direct referenda. The argument proceeds in four steps. First, I set out in more detail the problem of under-responsiveness to the interests of the cognitively disabled. Second, I consider a range of alternative institutional reforms, showing that each is likely to either have no substantial impact upon the problem of under-responsiveness or, otherwise, raises serious egalitarian concerns. Third, I set out the argument for the citizens' assembly, drawing heavily upon the wealth of recent empirical studies of so-called 'deliberative mini-publics'. Finally, I respond to a range of possible objections.

5.1. The Democratic Neglect of the Cognitively Disabled

Though the area is under-studied, it is generally accepted that governments tend to neglect the interests of the cognitively disabled, and that such persons' interests tend to suffer, in consequence.¹¹⁹ Research conducted by the World Health Organisation in 2004, for example, showed that 35%-50% of persons with serious mental disorders in developed countries, and 76%-85% in developing countries, had received no treatment in the previous year (Consortium, 2004).¹²⁰ The mentally disabled (including the cognitively disabled) are substantially more likely to be in poverty than the non-disabled, in both developed and developing nations (Palmer, 2011). Several studies have demonstrated that the cognitively disabled are substantially more likely than non-disabled persons to suffer from a range of chronic diseases (e.g. diabetes, high blood pressure) while, at the same time, being less likely to receive preventative care (e.g. Commission, 2006; Havercamp and

¹¹⁹ The World Health Organisation and World Bank's *World Report on Disability* (2013) offers a general overview.

¹²⁰ See also Kohn et al. (2004).

Scott, 2015; Reichard et al., 2011). The majority of caregiving responsibilities for such persons are discharged informally, typically by unpaid family members. In the United States, for example, over 75% of adults with developmental disabilities live at home with family caregivers, who themselves face problems as diverse as increased stress, social isolation, and limited employment opportunities (Organisation and Bank, 2013, pp. 141-3).

This state of affairs is intuitively unjust, a verdict upon which multiple theoretical perspectives converge. Luck egalitarians, for example, hold that inequalities which arise in virtue of factors for which individuals cannot be held responsible are unjust (c.f. Cohen, 1989a). Many conditions which give rise to cognitive impairments are caused by factors for which individuals cannot be held responsible (e.g. genetics). The disadvantages such persons suffer in virtue of their disabilities, then, are unjust on the luck egalitarian view.¹²¹

Utilitarians, on the other hand, hold that resources must be allocated so as to maximise overall welfare. The cognitively disabled often experience lower levels of welfare than they would otherwise under alternative arrangements. Failing to improve such persons' welfare is unjust, for utilitarians, unless all feasible ways of doing so would lead to a net decline in overall wellbeing, a claim which is desperately hard to believe, here.

Finally, sufficientarians hold that justice requires that all individuals have access to a threshold level of those goods (rights, capabilities, etc...) necessary for the living of an acceptable life. The goods allocated to the cognitively disabled fall below this threshold, on many accounts. Nussbaum (2007, ch. 3), for instance, argues that the cognitively disabled are frequently deprived of human capabilities – e.g. opportunities for mental stimulation – to which they are entitled on sufficientarian grounds.

¹²¹ Some (e.g. Anderson, 1999) are resistant to luck egalitarian treatments of disability, believing such views are committed to the claim that the lives of the disabled are somehow less valuable than those of the non-disabled. Luck egalitarians need not be committed to any such claim. They can simply hold that the fact that the cognitively disabled suffer disadvantages (e.g. poverty) *in virtue of* conditions (e.g. severe autism) for which they cannot be held responsible, is unjust.

It does not matter, for our purposes, whether one accepts any of these particular arguments. All that matters is that one be prepared to grant that the *status quo* treatment of the cognitively disabled is unjust. Promoting justice is among the most important functions governments, morally, ought to perform. Failures to redress these injustices, then, are serious moral failures.¹²² What causes such failures? And what can be done to ameliorate them? In a sense, the answer to the former question is obvious. Politicians' behaviour is driven by electoral incentives, and politicians have little incentive to attend to the interests of the cognitively disabled. Let us, for convenience, refer to this as the *problem of under-responsiveness*. Some proponents of enfranchising the cognitively disabled (e.g. Appelbaum, 2000, p. 850) express the hope that doing so will give governments more powerful incentives to attend to such persons' interests.¹²³ Such hopes are naïve. For at least three reasons, the enfranchisement of the cognitively disabled is unlikely to make any substantial difference to politicians' electoral incentives, and therefore to their behaviour.

First, as we have already noted, the cognitively disabled comprise a very small fraction of the overall population (around 1%).¹²⁴ Even were they to be enfranchised, many such persons will fail to vote through either disinterest or incapacity.¹²⁵ As a group, then, the cognitively disabled will generally be too *small* (or else, spread too thinly across electoral districts) to make a meaningful difference to any politician's electoral prospects in the vast majority of cases. The votes of the cognitively disabled are therefore unlikely to have any substantial impact upon politicians' incentives. Many other 'persistent minorities' experience governmental neglect for this very reason. The United States' treatment of Native Americans is an oft-cited example.¹²⁶

¹²² I presuppose, here, that there are feasible courses of actions governments could pursue that might help ameliorate these injustices. This seems overwhelmingly plausible, even accepting that there are limits to the capacities of government to ameliorate the disadvantages suffered by the cognitively disabled. Outlining what governments specifically ought to do, however, would take us too far afield.

¹²³ As discussed in chapter two, a substantial body of evidence indicates that the enfranchisement of some previously excluded groups – e.g. women (Aidt and Dallal, 2008), the unwealthy (Abou-Chadi and Orłowski, 2015), and African Americans (Husted and Kenny, 1997) – caused governments to allocate more resources to those groups.

¹²⁴ The case of the cognitively disabled is crucially different from the case of children in this respect, insofar as children generally comprise a much greater fraction of the population. For example, in 2016, persons aged 0-17 comprised 22.8% of the population of the United States (Statistics, 2017, p. 93).

¹²⁵ We might compel the cognitively disabled to vote. There are, however, important reasons not to do so particular to the case of the cognitively disabled (e.g. the risk of causing psychological distress).

¹²⁶ See Rights (2003) for an overview.

Enfranchising the cognitively disabled might have indirect effects on politicians' electoral incentives. Doing so might, for example, signal to society at large that such persons' interests deserve greater consideration, prompting non-disabled citizens to give greater weight to the interests of the cognitively disabled in their voting behaviour. It is hard to say for certain whether such effects are likely to occur, and what their impact might be.¹²⁷ Most studies of the enfranchisement of formerly excluded groups seek to control for such effects, rather than measure them. There are good reasons to be pessimistic, however. Many minority groups whose members are enfranchised continue to suffer governmental neglect, the semiotic effects of their enfranchisement notwithstanding.

Second, though I think many cognitively disabled persons capable of voting competently, it is undeniable that many are not. Such persons are unlikely to vote at all. But, even if that were not the case, such persons are likely to lack the ability to discern between the parties on the ballot with respect to their historical, and/or likely future, impact upon their interests. There would be little politicians could do to attract such persons' support, and therefore little incentive to try. Even were the cognitively disabled numerous enough to make a significant difference to politicians' electoral prospects, there would be a substantial *subset* of that group to whose interests politicians would have little incentive to attend.

Finally, even assuming (plausibly) some degree of humanitarian concern for the cognitively disabled on the part of elected officials, governments have the ability to effectively compel private citizens (typically, family members) to take on the costs of caring for the cognitively disabled, themselves. As Simon Keller (2016, pp. 715-6) points out, governments are able to engage in a form of *moral blackmail* wherein, by failing to provide adequate state support, family members are left in a situation in which they are morally obliged to take on the costs of caring for such persons. Policymakers are thus able to allocate resources to other areas, safe in the knowledge that others will take up the slack.

¹²⁷ Studies of the effects of enfranchising previously excluded groups typically seek to *control for* these indirect effects, rather than measure them.

It is unlikely, then, that enfranchising the cognitively disabled will make a substantial difference to politicians' electoral incentives. Doing so is therefore unlikely to alleviate the problem of under-responsiveness to any significant degree. This is not an argument against enfranchising such persons. It does, however, suggest a *prima facie* case for considering other reforms to the democratic process that might stand a better chance of ameliorating the problem. Such reforms come in two varieties – interventions upon existing mechanisms of legislative decision-making, and the introduction of novel mechanisms of legislative decision-making. Section II considers the former, section III the latter.¹²⁸

5.2. Interventions on Existing Mechanisms

Interventions on existing mechanisms might follow two strategies – constraining outputs, and manipulating inputs.

5.2.1. Output Constraints

Output constraints, in general, aim to limit the ability of legislatures to set back the interests of particular social groups. The standard mechanism, here, is judicial review: empowering courts to strike out or modify legislation injurious to certain individual rights. Nussbaum (2007), in this vein, has proposed the constitutional entrenchment of an expansive set of human rights for the cognitively disabled. Some democracies – e.g. the US – already protect some rights of the cognitively disabled in this way (Nussbaum, 2009). Systems of judicial review vary along many dimensions, most of which are irrelevant for our purposes (c.f. Waldron, 2006, pp. 153-9). What is significant for our purposes, however, are variations in the rights courts are empowered to protect. Modest proposals would allow courts to intervene only where the most fundamental rights (e.g. to life) are at stake. More expansive proposals, including Nussbaum's, would also allow courts to intervene where less fundamental rights (e.g. to 'play') are at stake.

¹²⁸ Few of the proposals we shall canvass have been discussed elsewhere in the context of the cognitively disabled. Democratic theorists, however, have taken an interest in structurally similar problems – e.g. accounting for the interests of future generations (c.f. González-Ricoy and Gosseries, 2016; Van Parijs, 1998). We shall draw upon this literature as we proceed.

Judicial review has often been an effective bulwark for individual rights including, sometimes, the rights of the cognitively disabled. I would support the introduction of sensible regimes of this sort where they do not presently exist. Judicial review alone, however, is unlikely to constitute a sufficient remedy to the problem of under-responsiveness. Courts have historically proven to be fallible instruments for the protection of the rights of minority groups (Waldron, 2006). It is also unlikely that courts could ensure adequate consideration for the interests of the cognitively disabled without impinging excessively upon the authority of the legislature. Even the most ardent supporters of judicial review (e.g. Dworkin, 1996) accept that the appropriate role for courts in democratic societies is limited to protecting the integrity of the democratic process, and preventing legislatures from violating individuals' fundamental rights. Justice for the cognitively disabled involves rights-protections. But, surely, it also goes beyond such matters and, therefore, beyond the appropriate province of courts. Addressing the problem of under-responsiveness will require addressing the problem's underlying causes, not merely containing its effects.

5.2.2. Input Manipulations

Input manipulations would aim to intervene on the legislative process in the hope of producing decisions more sensitive to the interests of the cognitively disabled. Such interventions might be pitched at the level of citizens, or officials.

Citizen-level interventions would aim to address the problem of under-responsiveness by taking steps to improve the electoral prospects of candidates sympathetic to the cognitively disabled, and/or give parties incentives to adopt policy platforms which take better account of such persons' interests. One strategy would involve intervening on citizens' behaviour, to encourage them to vote (and/or engage in other forms of activism) with the interests of the cognitively disabled in mind. Several such interventions are possible. Public education strategies (e.g. advertising campaigns) might attempt to raise the salience of the issue. Accountability measures might be introduced in an attempt to lower the costs of gathering information with respect to the treatment of the cognitively disabled, and generate public pressure to address policy failures. Various bodies (e.g. disability

commissions, ombudsmen) might be tasked with producing regular public reports on the treatment of the cognitively disabled, for example.¹²⁹

A second strategy might involve attempting to amplify the influence of citizens already concerned with the treatment of the cognitively disabled. Brighthouse and Fleurbaey (2010, pp. 148-51) and Nussbaum (2009, pp. 347-9), for example, have proposed allowing the guardians of cognitively disabled persons incapable of voting to cast a proxy ballot on their behalf. More radical proposals are possible. One might, for example, introduce plural voting, allocating (say) five additional votes to persons likely to be sympathetic to the cause of the cognitively disabled (e.g. members of disability advocacy groups).

Both strategies are problematic. Attempts to intervene upon citizens' behaviour are unlikely to prove effective. Citizens are generally politically disengaged – indeed, rationally so, given their limited ability to affect political outcomes (c.f. Downs, 1957). Attempts to increase the electoral salience of the interests of the cognitively disabled, or cause individuals to become more informed by lowering the cost of gathering information, face an uphill battle in commanding citizens' attention and, therefore, in changing their behaviour. That is not to say that such interventions will make *no* difference. Lowering the cost of gathering information, for example, is likely to cause persons with prior interests in the issue to become more informed. Perhaps in circumstances where such persons are very numerous, such strategies might have substantial positive effects. Such circumstances, however, are surely very rare.

What, then, of our second strategy? Marginally increasing the influence of persons likely to be sympathetic to the cognitively disabled (e.g. allowing guardians to cast proxy votes on behalf of those unable to vote) is unlikely to make any substantial difference to political outcomes. Cognitively disabled persons unable to vote competently are a tiny fraction of the overall population. It is unlikely that the additional voting power guardians would enjoy under such proposals would make any meaningful difference to politicians' incentives.

¹²⁹ Similar proposals have been defended in the case of future generations by, among others, Beckman and Ugglå (2016), Caney (2016), and Thompson (2016).

Perhaps increasing such persons' power more substantially (e.g. by introducing plural voting) might prove more effective. This is far from obvious. Increasing the political power of persons sympathetic to the cognitively disabled may render those persons *less likely* to vote with the interests of the cognitively disabled in mind. Straightforwardly, increasing an agent's political power raises the relative cost to that agent of acting altruistically, rather than self-interestedly (Brennan and Lomasky, 1993, pp. 22-4).

Even setting such worries aside, democratic theorists are generally resistant to such proposals for familiar reasons of political equality. There are several accounts of political equality. Virtually all, however, converge upon a requirement that citizens enjoy *equal political power*.¹³⁰ The proposals under discussion violate such requirements. Their whole point, after all, is to *create* inequalities of political power in favour of persons with a particular set of attitudes towards the cognitively disabled. Egalitarian considerations are not necessarily decisive. The disvalue of the political inequalities such proposals involve might, potentially, be outweighed by the gains in wellbeing for the cognitively disabled such proposals might achieve. Still, these concerns should prompt us to at least consider alternative paths of reform that do not entail such concerns.

Let us, then, consider official-level interventions. One strategy, here, would seek to amplify the influence of officials sympathetic to the cognitively disabled. There are many ways in which this might be achieved. Ekeli (2009; 2016), for example, has proposed allowing sufficiently large minorities of legislators to delay the passage of legislation they reasonably believe would have unacceptable effects on future generations, the idea being to guarantee more time for deliberation, and/or force the majority to improve the legislation. We might imagine similar systems being instituted with respect to legislation that takes insufficient account of the interests of the cognitively disabled.

¹³⁰ We surveyed the principal accounts in chapter four. I defend a requirement of this sort in chapter seven.

Alternatively, one might seek to alter the composition of legislative bodies, in order to increase the proportion of officials sympathetic to the cognitively disabled. Many have proposed the introduction of quotas for female candidates, or else that special seats in parliament be reserved for women, to combat under-responsiveness to women's interests (c.f. Phillips, 1994). Direct analogues of such proposals potentially raise concerns over the capacity of the cognitively disabled to engage in the lawmaking process.¹³¹ Whether such concerns are warranted is an empirical question we cannot settle here. If such proposals prove inadvisable for this reason, however, similar proposals are not difficult to imagine. Special seats might be established for persons who are to act as *surrogates* for the cognitively disabled, advocating on their behalf in the legislature, for example.¹³²

These proposals, too, are of limited appeal. Proposals to increase the capacity of politicians to act on behalf of the cognitively disabled face the elementary difficulty that few will be willing to exercise such powers. The problem of under-responsiveness arises because elected officials have limited incentive to attend to the interests of the cognitively disabled in the first place. It is hard to see why simply increasing the power of elected officials to act on such persons' behalf should render them any more *likely* to do so.

The effects of attempts to modify the composition of legislatures via the appointment of 'special representatives' will likely vary with the method by which such representatives are selected. Two broad methods are possible – popular election, and government appointment. Government-appointed representatives are likely to be ineffectual. Governments have little incentive to appoint representatives likely to disrupt their agenda. There are alternative means of appointing such representatives. Disability advocacy groups, for example, might be empowered to do so. This, however, raises egalitarian concerns parallel to those which attend plural voting. Agents able to appoint representatives to the legislature would enjoy substantially greater power than the citizenry at large. Most of us would be inclined to object to such proposals for that reason.

¹³¹ Working directly in the lawmaking process is obviously more demanding than voting.

¹³² Dobson (1996) and Ekeli (2005) have proposed similar arrangements for the representation of future generations.

Special representatives elected by the citizenry will face the same electoral pressures as ordinary representatives. For that reason, they likely to be ineffectual. If they *not* ineffectual, then they are likely superfluous. If it is electorally advantageous for special representatives to agitate for the interests of the cognitively disabled, then it would presumably also be advantageous for ordinary representatives to do so.¹³³ Representatives might be more effective were they to be elected by some subset of the electorate likely to be more concerned with the interests of the cognitively disabled – the cognitively disabled and their families, for example. But this, again, raises egalitarian concerns. Citizens who enjoy the capacity to vote for both ordinary representatives and special representatives would enjoy greater political power than citizens who could not.

These egalitarian concerns are, again, not necessarily decisive. But it is unlikely that the proposals canvassed above would realise goods sufficient to outweigh these concerns. Unless the governing party fails to command a majority and must seek the support of other representatives, the mere presence of such representatives in the legislative chamber is unlikely to secure substantial policy advances. Special representatives might publicly agitate for the interests of the cognitively disabled, but they will almost never be able to bring about policy change.

There are many proposals I have not discussed, some of which might possibly address the problem of under-responsiveness more effectively, without raising egalitarian concerns. I am sceptical, however. The problem of under-responsiveness is (among other things) driven by the limited electoral rewards of attending to the interests of the cognitively disabled. The difficulties of intervening upon citizens' motivations being as they are, it is hard to see how politicians might be incentivised to take the interests of such persons more seriously without increasing the relative political influence of citizens with the right kinds of moral attitudes towards the cognitively disabled. Yet it is precisely this which seems to be objectionable on egalitarian grounds. For this reason, then, I think it worthwhile to consider the

¹³³ For a similar criticism of proposals of this sort in the case of future generations, see Jensen (2015).

alternative avenue of reform: supplementary mechanisms of legislative decision-making.

5.3. Supplementary Mechanisms

This family of proposals involves establishing legislative decision-making institutions to supplement those of conventional representative democracy. The promise of such arrangements is clear enough. The problem of under-responsiveness is created by the incentive-structure of elected officials. Legislative decision-making processes that *bypass* elected officials, then, might (though, of course, will not necessarily) prove more responsive to the interests of the cognitively disabled. There is a virtually unlimited range of options, here. Legislative power could, in-principle, be extended to almost any agent or agency. Most of these options, however, would be objectionable on egalitarian grounds. Delegating legislative power to a council of experts on cognitive disability might produce high-quality policies. But it would also drastically increase the political power of some small subset of the population, without any compensating increase in the power of other citizens. I therefore set such proposals aside in favour of a more familiar class of proposals: direct democracy.

Direct democracy involves legislative decision-making by popular vote among the citizenry. Such arrangements are relatively common. Over half of all states and cities in the US, for example, afford citizens opportunities for direct decision-making of some kind (Lupia and Matsusaka, 2004, p. 463). Citing familiar risks – elite dominance, low-quality decision-making by uninformed citizens, and so on – most democratic theorists are suspicious of direct democracy.¹³⁴ That is unfortunate. Empirical evidence indicates that though direct democracy certainly can exhibit these ills, it does not necessarily do so (Budge, 2008; Lupia and Matsusaka, 2004). There is a multiplicity of ways in which direct democracy can be implemented. Different institutional arrangements realise radically different consequences. Elite dominance, for example, is more prevalent in systems (e.g. California) that allow virtually unrestricted campaign spending than in systems (e.g. Quebec) in which spending is tightly restricted (Budge, 2008, p. 605). Obviously, not all (or even most)

¹³⁴ These concerns have a long history – see, for example, Madison (1787) and Plato (1974, p. 282).

forms of direct democracy are likely to lead to improved outcomes for the cognitively disabled. However, I do think that a certain kind of arrangement, which I shall now outline, might well do so.

5.4. A Citizens' Assembly for the Cognitively Disabled

My proposal is modelled upon the 2004 British Columbia Citizens' Assembly (BCCA) on electoral reform.¹³⁵ The BCCA consisted of 160 British Columbian citizens, selected by near-random procedure. Over eleven months, the BCCA was tasked with considering whether British Columbia's electoral system should be reformed and, if so, how. The process was conducted in several stages. Members, first, spent several weekends learning about electoral systems in consultation with experts. They then deliberated over the values it was desirable for electoral systems to serve, and which system best embodied those values. The BCCA then conducted public consultations and drafted a final report recommending that British Columbia adopt a system of single transferable vote. The proposal was then put to a popular referendum, where it received an impressive 57.7% of the province-wide vote (just short of the 60% success threshold).

Many have noted the appeal of BCCA-like processes for decision-making in policy areas in which conflicts between the electoral interests of politicians and the public interest are likely to lead to low-quality decisions (e.g. decisions over the drawing of electoral boundaries).¹³⁶ Removing the influence of politicians' electoral incentives, such authors suggest, is likely to lead to proposals which, if adopted, would better track the public interest. I agree, but also think that such processes potentially have wider application.¹³⁷ Conflicts of interest are not the only cause of poor-quality decision-making. Failures of government policy also occur where politicians have insufficient electoral incentive to seriously engage in a given policy area at all. BCCA-like processes might prove better able to account for the interests

¹³⁵ The BCCA has been discussed extensively elsewhere. See especially Warren and Pearse (2008a). A number of other jurisdictions have experimented with similar processes – e.g. Ontario, and the Netherlands.

¹³⁶ See Fung (2007a, pp. 451-3), Pettit (2012, pp. 231-2), and Thompson (2008b). Deliberative mini-publics of various kinds, without the power to call referenda, have been run on a plethora of issues in recent years (Dryzek, 2010, ch. 8; Fishkin, 2009; Goodin and Dryzek, 2006).

¹³⁷ For a quite different proposal to extend the application of such processes, see Ferejohn (2008, pp. 212-3). See also Smith (2009, pp. 188-93).

of groups characteristically neglected by elected officials, including the cognitively disabled, for the simple reason that such bodies are unaffected by the electoral pressures which cause politicians to neglect such groups in the first place.

I propose, then, the creation of a citizens' assembly for the cognitively disabled (CACD). Its task would be to evaluate the impact of existing government policy upon the interests of the cognitively disabled (and other relevant parties), and devise reform proposals to be put to the public in popular referenda.¹³⁸ As I will show, there is good reason to believe that the CACD would have the capacity to (1) deliberate in a rational, informed manner over the merits of *status quo* government policy, and (2) devise high-quality proposals for reform that (3) stand a good chance of being adopted.

As we shall see, crucial to the CACD's chances of success would be its capacity for high-quality deliberation. Such deliberation is generally infeasible with large groups (Fishkin, 2009, ch. 2).¹³⁹ The assembly, then, must be fairly small – say 200 citizens. For reasons to be explained momentarily, members are to be selected at random from the adult population, and paid a salary to participate. Initially, members are unlikely to have any particular policy expertise. Steps would therefore need to be taken to increase members' epistemic competency. Upon selection, then, members would be required to undergo an intensive education process involving, at least, consultations with policy experts, medical professionals, advocates, carers, and the cognitively disabled themselves. We cannot expect this to turn ordinary citizens into policy experts overnight. Still, a substantial body of evidence suggests that small groups of ordinary people, under good deliberative conditions, are able to rapidly acquire command of relatively complex subject matter, especially where they are brought into contact with experts (c.f. Dryzek, 2010, pp. 158-9; Fishkin, 2009, ch. 5; Fishkin and Luskin, 2005, p. 291). Such persons also appear to come to well-reasoned policy judgements, often revising their preferences in light of new information. Blais et al. (2008), for example, found that members of the BCCA, on

¹³⁸ A weaker proposal would involve assembling citizens to deliberate, and having them report to elected officials in an advisory capacity. The obvious worry, however, is that their recommendations will be ignored. This has often (though not always) been the case with similar exercises, though effects vary with background political conditions (Dryzek, 2010, pp. 170-6).

¹³⁹ Though, arguably, this does not mean that *deliberative legitimacy* is impossible with larger numbers (c.f. Dryzek, 2001; Mansbridge et al., 2013).

the whole, were able to clearly and consistently articulate the criteria according to which they believed competing electoral systems ought to be judged, accurately assess and evaluate competing systems in accordance with those criteria, and underwent substantial preference changes.

Two further features of the assembly's design should contribute to its epistemic competency. First, in ways to be explained momentarily, both experts and members of the disability community would have input at all stages of the assembly's work. Second, the random selection and payment of members should ensure that a substantial degree of cognitive diversity obtains among group-members. Diversity is an important epistemic asset, insofar as it creates opportunities for groups to share a range of perspectives and information (Landemore, 2013b).¹⁴⁰

The CACD's processes would be similar to those of the BCCA. First, the assembly would be required to deliberate over the objectives they believe government policy with respect to the cognitively disabled ought to promote (e.g. promoting autonomy, improving wellbeing etc...). An initial list of possible objectives might be sought from experts, to be refined by the assembly. Second, the assembly would be required to hear testimony from experts on the merits of *status quo* policy. The assembly would then be required to decide, on the basis of that testimony, whether government policy adequately serves the objectives settled upon at the previous stage. If the assembly judges that policy falls short in some respect, they would then proceed to the following stages.

At the third stage, the assembly would be required to devise, deliberate over, and revise policy proposals. Several sub-steps would need to be taken at this stage, including consultation with experts and members of the disability community from whom policy ideas might be drawn, modelling the likely impact of possible reforms (both upon the cognitively disabled, and the citizenry at large), comparative analysis as to the costs and benefits of competing proposals, and deliberation as to which of the relevant proposals ought to be pursued. It is particularly important, at this stage, to ensure that the cognitively disabled themselves are 'discursively represented' in

¹⁴⁰ Paying members to participate, in particular, ought to minimise socioeconomic bias in the assembly's makeup, a problem which affected the BCCA (Warren and Pearse, 2008b, pp. 10-11), and frequently impacts similar endeavours (Fung, 2007b, pp. 162).

the assembly's deliberations (Dryzek and Niemeyer, 2008), in order to ensure that the policies proposed are genuinely responsive to such persons' interests.¹⁴¹ The ideal way in which this might be achieved would be to appoint a number of cognitively disabled persons as members of the CACD itself. There are obvious concerns, however, over such persons' capacity to participate. Whether these concerns are valid is an empirical matter we cannot adjudicate here. If they *do* turn out to be valid, however, there are a range of second-best options available. We might arrange for policy experts, and other members of the disability community to be present during the CACD's deliberations, for example, to represent the cognitively disabled's interests in the assembly's discussions.¹⁴²

Following deliberation, the assembly must, fourthly, decide which policy or policies they wish to take forward. Ideally, such decisions ought to be made by consensus, in order to ensure that the diverse perspectives of the group members are all accounted for.¹⁴³ Consensus, however, is unlikely to be forthcoming, given the plurality of views likely to prevail amongst a diverse group of individuals. For that reason, such decisions will likely have to be made by a vote.¹⁴⁴ Proposals commanding sufficient support in the assembly would then be taken forward to public consultation. Legislation would need to be drafted at this stage, to be put out for public comment. The assembly should be required to collate and consider the public commentary, revising proposed legislation where appropriate.

Finally, provided the proposal continues to enjoy sufficient support in the assembly, a referendum question must be formulated, together with a rationale for the proposed reforms, to be widely disseminated among the citizenry prior to the vote. Given the possibility of multiple policy proposals, this process might be repeated several times through the assembly's term.¹⁴⁵

¹⁴¹ There is evidence from studies of deliberative mini-publics that the perspectives of persons under-represented in the group tend to be neglected in deliberation (Smith, 2009, pp. 83-5).

¹⁴² Perhaps the ideal arrangement would involve a mix of *both* the cognitively disabled themselves, and other surrogate representatives.

¹⁴³ There is some evidence from other mini-publics that consensus requirements (under certain conditions) enhance deliberation, causing participants to engage in a greater degree of interpersonal justification for their favoured points of view (Steiner, 2012, pp. 208-15).

¹⁴⁴ A supermajority requirement might be appropriate, to ensure that even if all perspectives are not accommodated, a wide range of perspectives will have been.

¹⁴⁵ A small bureaucracy would have to be established to assist the assembly. Officials would be required to keep order, provide expert advice, assist with legislative drafting, and so on. An oversight

To minimise public fatigue, referenda should be held concurrently with elections. Referendum propositions should take the form of binary, 'yes/no' questions and, for familiar reasons of fairness (c.f. May, 1952), decisions should be made on the basis of simple majority rule. The ballots issued to citizens should also make clear that the proposed reforms were devised by the citizens' assembly. This is of particular importance. Citizens are likely to be relatively ignorant over the details of the proposals. Risk-averse citizens may be disinclined to support proposals they do not understand, or where they lack sufficient trust in such proposals' advocates (Warren and Gastil, 2015, pp. 566-7). However, if citizens can be made aware of the *process* by which the proposals were devised, they may be more likely to accept such proposals as those which they themselves would have come to favour, if they had deliberated carefully about the issue in a well-informed manner.¹⁴⁶ For the same reason, it is essential that the assembly's rationale for the proposed reforms be widely disseminated among the citizenry.

Whether voters will behave this way is an empirical question. Fortunately, two real-world cases offer hope on this score. First, the BCCA. In a study of voter behaviour in the referendum following the BCCA, Cutler et al. (2008, p. 176) found that citizens with some degree of knowledge of the BCCA were substantially more likely to vote in favour of the proposed reforms. Second, the Oregon Citizens' Initiative Review process (CIR). Established in 2010, the CIR involves assembling small groups of randomly selected citizens who are tasked with deliberating over the merits of upcoming ballot initiatives, and writing a short statement outlining their views, to be delivered to households in advance of the vote. Gastil and Knobloch (2010, pp. 39-40) studied the CIR process over an initiative to introduce mandatory-minimum sentences for sex offenders. Most of the CIR panel, following deliberation, were strongly opposed to the proposal, a fact reflected in the statement delivered to households. Experiments which exposed a subsample of voters to the CIR Statement showed that whereas two-thirds of those who were not exposed supported the

mechanism would need to be established to ensure the assembly confines itself to issues within its purview.

¹⁴⁶ This is a crucial advantage of the CACD over allowing experts to devise reforms and put them to referenda. Popular trust in elites is in decline, whereas evidence indicates that citizens are, on the whole, willing to trust the judgement of citizens' assemblies and similar bodies precisely because such bodies are comprised of ordinary people (Cutler et al., 2008, p. 179; Levy, 2010, pp. 132-8).

measure, only 40% of those exposed supported it. The suggestion, in both cases, is that voters are prepared to treat such bodies as ‘trusted information proxies’ (Warren and Gastil, 2015, pp. 567-72), deferring to their judgement on the matter in hand. We have good reason to hope that voters might behave the same way with respect to the CACD, given the similarity between it and these other exercises.

Of course, the whole exercise would be pointless – or, worse, harmful – if the proposals that emerge from the CACD are likely to be of low quality. There are obvious potential concerns on this score. CACD members are to be ordinary people, few of whom are likely to possess any relevant expertise. Given the ongoing prevalence of discriminatory attitudes towards the mentally ill (Schomerus et al., 2012), it is likely that a substantial proportion of those selected will hold undesirable beliefs about the cognitively disabled. Further, we might worry that the deliberative process the assembly is to engage in is problematic. Groups are prone to a range of deliberative pathologies (c.f. Sanders, 1997; Sunstein, 2006, ch. 3) which, in turn, are liable to severely diminish the quality of proposals likely to emerge.

The empirical evidence, however, paints a rather more hopeful picture. Studies reveal little evidence of the deliberative pathologies prophesied by deliberation’s critics, provided deliberative exercises are well-structured (Fishkin and Luskin, 2005).¹⁴⁷ Evidence from the BCCA and similar exercises (as discussed above) suggests that the assembly is likely to deliberate in a well-informed, competent manner. Crucially, deliberation also often brings about significant shifts in persons’ attitudes (Fishkin, 2009, pp. 133-9).¹⁴⁸ Deliberative democrats have long argued that well-structured deliberation is likely to promote empathy for persons who suffer various forms of disadvantage (Goodin, 1996). Experimental studies lend support to this claim. A meta-analysis of deliberative polling experiments from Gastil et al. (2010), for example, shows that where persons’ attitudes shift, they typically grow more egalitarian and more collectivist.

¹⁴⁷ Several of the essays in Grönlund et al. (2014) engage with the various ways in which mini-publics might be structured in order to avoid these pathologies. Also, as Goodin (2009) points out, in certain instances, some of these ‘pathologies’ (e.g. the common knowledge effect, group polarisation) are the product of epistemically rational behaviour, and entirely unproblematic as such.

¹⁴⁸ Importantly, Blais et al. (2008), found substantial evidence of these effects among members of the BCCA.

Indeed, where citizens are asked to come to policy judgements in ‘mini-publics’ (e.g. deliberative polls, citizens’ juries), deliberation tends to cause persons to grow markedly more public-spirited (Smith, 2009, pp. 97-98).¹⁴⁹ Ackerman and Fishkin (2004, pp. 55-7), for example, recount a series of deliberative polls conducted by Texas utilities over energy. Initially, just 52 percent of participants on average indicated a willingness to pay more, each month, for renewable energy. Following deliberation, however, 84 percent of persons expressed such a willingness. Niemeyer and Jennstål (2016, pp. 254-8) document several mini-publics in which citizens grew more supportive of taking action to address climate change (partially) for the sake of future generations’ interests. Similar results have been found in many other policy areas. There are good reasons to be optimistic, then, as to the quality of proposals likely to emerge from the CACD.

We cannot, of course, be certain that all the proposals the assembly will devise will universally be of high-quality. Yet similar risks attend any institutional innovation – and we should hardly think ourselves free from of low-quality proposals under conventional representative democracy. Moreover, members of the CACD would not be expected to come up with reforms by themselves, but rather to do so in close consultation with policy experts. The CACD’s proposals will not also necessarily be implemented. Low-quality proposals will likely be called out as such in the period of campaigning likely to take place in advance of any referendum.

The CACD is also compatible with two crucial safeguards against low-quality proposals. First, we might insist that legislation resulting from successful referenda have the status of ordinary statute, subject to modification and/or repeal by the legislature. Legislation which proves to have serious adverse consequences can thus be repealed, or modified. Second, the CACD is compatible with regimes of constitutional rights-protections for the cognitively disabled, wherein courts have the power to modify or strike out particularly objectionable legislative decisions – i.e. those which violate the fundamental rights of the cognitively disabled.

¹⁴⁹ Interestingly, there is also some evidence that where real-world political processes are more deliberative, they tend to produce more egalitarian policy outcomes (Steiner, 2012, pp. 225-9).

The CACD, then, offers a plausible path by which policy progress might be made towards justice for the cognitively disabled. The CACD itself – free from the electoral pressures which give rise to the problem of under-responsiveness – is likely be substantially more sensitive to the interests of the cognitively disabled than the standard processes of representative democracy. Of course, a majority of citizens need to be willing to vote for the proposals in question if they are to be passed into law. Very unpopular proposals are unlikely to succeed, no matter how beneficial they might be. Still, there are grounds for hope. The evidence discussed above would seem to suggest that many citizens might be prepared to defer to the assembly's judgement, and vote in favour of its proposed reforms. Certainly, the chances of policy progress seem greater under the CACD than either the *status quo*, or the any of the alternative reforms discussed in section two.

Moreover, the CACD is perfectly consistent with the requirements of political equality. Members of the CACD do not enjoy any more or less power than other citizens, for the simple reason that they lack the power to *impose* policies upon the citizenry at large. Rather, in terms of the distinction drawn in chapter three, members of the CACD enjoy mere influence – the ability to propose policy changes, and to persuade others to support them. With a little exaggeration, then, the CACD offers us the best of both worlds. Policy progress on one hand, and political equality on the other.

The CACD might also have two other important benefits. First, the CACD might have substantial expressive value. The problem of under-responsiveness is objectionable not merely in virtue of its giving rise to poor-quality results, but also, plausibly, because it expresses an objectionable attitude towards the cognitively disabled. The neglect of such persons' interests in the policy process publicly signals that their interests are not as significant as those of other citizens. The CACD would constitute an important corrective, insofar as its explicit purpose is to ensure that such persons' interests are taken seriously. Secondly, and relatedly, the establishment of the CACD, insofar as it signals that the interests of the cognitively disabled ought to be taken seriously, might prompt at least some individuals to revise their attitudes towards such persons.¹⁵⁰

¹⁵⁰ Though, of course this might also be a benefit of many of the proposals discussed above.

There is, then, a powerful, positive case to be made for the CACD. Notwithstanding, there are three lines of objection worth considering.¹⁵¹

5.5. Objections

5.5.1. Legislative Neglect

One might, first, object that politicians will use the existence of the CACD to disclaim responsibility for the cognitively disabled, deepening the legislative neglect of such persons.

Even supposing this were right, however, it is quite unclear what the objection is supposed to be. Perhaps the concern is supposed to be consequentialist: deepening the legislature's neglect of the cognitively disabled would lead to worse outcomes. Yet politicians *already* neglect the interests of the cognitively disabled quite substantially. Deepening that neglect is unfortunate, but ought to be more than compensated for by the policy progress we might reasonably hope for under the CACD.

Perhaps, instead, the concern is supposed to be expressive: allowing responsibility for the cognitively disabled to be outsourced from society's principal lawmaking body might be thought to express an objectionable attitude about the cognitively disabled. Perhaps, that their interests are not of sufficient significance to be considered alongside others persons'. The marginal disvalue of the CACD on this score, however, is surely very slight, given how little attention the interests of the cognitively disabled command in typical legislatures at present. Moreover, this disvalue is likely to be outweighed by the expressive *value* of the CACD, as outlined above.

¹⁵¹ An important general objection to giving 'mini-publics' a prominent role in shaping policy has been raised by Lafont (2015). Such institutions, she claims, do not promote deliberation among the public at large. They may even crowd out such deliberation, if citizens blindly defer to their verdicts. In response, we should note that, at most, Lafont's concerns are grounds for ensuring that deliberative mini-publics are employed as simply one part of a wider deliberative system (Dryzek, 2017). Moreover, this concern seems more plausible in some cases than others. There is little risk of 'crowding out' public deliberation over policy for the cognitively disabled, because the issue typically commands so little public attention anyway.

Perhaps, finally, the concern is supposed to be democratic: the legislature's abrogation of responsibility for the cognitively disabled might be thought to deprive the public of a say over the policy area. I don't see how. The CACD would not preclude citizens from pressuring their officials to act on these issues. The CACD would also be required to consult with the public, and proposals will be implemented only if approved by referendum – surely a much more direct form of policy influence than that typically afforded to citizens under ordinary representative democracy.

In the absence of some alternative basis for this objection, then, we can safely set this concern aside.

5.5.2. Limited Resources

Alternatively, one might argue that the proposal is likely to work too well. Overly generous proposals might emerge from the CACD, and be passed into law. Governments, however, have limited resources. The implementation of such policies might detract from their ability to attend to other important policy areas.

The objection, here, cannot merely be that the allocation of increased funds to the cognitively disabled might lead to less resources for other areas. That is true virtually every time governments reallocate resources from one area to another. The objection, then, must be that excessive resources will be allocated to the cognitively disabled, at the expense of other legitimate policy priorities. This worry seems rather overstated. As noted above, the cognitively disabled comprise a very small fraction of the total population. Even a very generous allocation of resources, then, cannot reasonably be expected to have a particularly severe impact upon other priorities.

Moreover, this objection implicitly presupposes that the *status quo* pattern of resource allocation is superior to that which would obtain under the CACD. Yet it is unclear why we should accept this. Resources seem clearly to be *under*-allocated to the cognitively disabled in most states under the *status quo*. Perhaps the CACD

would lead to excessively generous outcomes. But it is by no means clear that those outcomes would thereby be *worse* than those which characteristically obtain under typical democratic arrangements.

5.5.3. Proliferation

Finally, one might object that the argument proves too much. If states were to establish the CACD, they would surely also be required to establish similar processes for many other groups to whom governments are under-responsive: the physically disabled, future generations, religious minorities, felons etc... As stated, the concern is not particularly forceful. If it could be demonstrated that similar mechanisms are likely to realise better results with respect to other policy areas than feasible alternatives, and if there is nothing objectionable about such processes in themselves, it is hard to see what the objection is supposed to be.

A more sophisticated iteration of the objection, however, might point out that establishing very many such processes is likely to be self-defeating. Citizens are risk-averse, and have limited cognitive resources to devote to politics. They might, as such, be less willing to consider each proposal on its merits were too many placed before them, at once. Proposals emerging from such processes are more likely to fail, then, where they are competing for public attention against many other proposals from similar processes.

This is surely right. Yet, it cannot be the end of the discussion. We often face situations in which it is possible to provide particular goods to only a subset of those persons who might plausibly have claims to the good in question. Rarely, however, is the appropriate response to 'level down', and provide those goods to no-one. Rather, the appropriate response is to consider the relative strength of each party's claims, and allocate the good in question in accordance with the strength of those claims (Broome, 1990-1).

There are several reasons to think that the claims of the cognitively disabled will be comparatively strong, here. First, for many other groups, solutions of the sort canvassed in section two may well prove sufficient. Religious minorities, for

example, may be sufficiently well-served by robust constitutional protections for their freedom of religious practice. Second, there are other, more standard, means of exercising influence in the political process which the cognitively disabled face particular barriers in accessing, given their more limited capacities – e.g. publicly campaigning for particular policies. The same obviously cannot be said of most other groups (e.g. religious minorities). Third, many cognitively disabled persons lack the capacity to exercise the franchise. They are, as such, denied the benefits of voting – e.g. opportunities for the expression of their moral attitudes. We might conceive of the CACD as a form of ‘compensation’ for that fact, a consideration which obviously does not apply in the case of other groups. Finally, though it is difficult to compare the various disadvantages incurred by different social groups, the evidence presented in section one certainly does seem to suggest that the cognitively disabled are *among* the most needful social groups, and therefore among the groups that might benefit the most from the establishment of such a process.

None of these considerations is necessarily decisive. It may be that some other groups (e.g. future generations) have claims as strong – or stronger – than the cognitively disabled. Yet, for two reasons, this need not defeat the argument. First, whilst the considerations discussed above do suggest that it would be inadvisable to run an excessive number of such processes simultaneously, it is still an open question what the optimum number of such processes might be. It still might be possible, without risking self-defeating consequences, to run multiple such processes at once, including the CACD.

Secondly, and more importantly, the fact that other groups might have claims stronger than those of the cognitively disabled does not show that the CACD process should *never* be initiated. Rather, what it shows is that other groups might *initially* have priority over the cognitively disabled. It is hard to see why we should accept that the cognitively disabled ought to be frozen out entirely, however. We might envision a ‘rotation’ system, to this end. In one electoral cycle, assemblies might be convened to consider the interests of felons and future generations. In the following cycle, assemblies might be convened for the cognitively disabled and refugees. And so on. This ‘turn-taking’ is, of course, less than ideal. But it is likely the best we can do – and almost certainly better than doing nothing.

At most, I think, the proliferation objection shows that we must be strategic in the way we deploy such processes – not that there is anything objectionable about deploying such processes as such. None of these lines of objection, then, seems to me to be successful.

5.6. Conclusion

I have argued, in this chapter, that the cognitively disabled are treated unjustly under the *status quo*, that such injustices are partially a product of the democratic process, and that they are unlikely to be resolved by the enfranchisement of such persons. I have considered a range of possible institutional reforms which might improve democracy's responsiveness to such persons' interests. The more moderate among these proposals (e.g. proxy votes) would do little to disrupt the causal processes which perpetuate the problem of under-responsiveness. The more radical of these proposals (e.g. plural voting) might well prove more effective, but are also difficult to justify on egalitarian grounds. The citizens' assembly offers the best of both worlds. It is a policy mechanism that is perfectly consistent with the requirements of political equality, and has the potential to deliver substantial policy advances. This is certainly not the only possible way in which deliberative mini-publics might be deployed to valuable effect. But it is, I think, *one* such way – and one which we have reason to pursue.

It is worth noting, before proceeding, a shift in focus in the following chapters. Our discussion thus far has presupposed that the fundamental institutions of democracy as defined in the introduction – universal suffrage, and decision-making by the aggregation of citizens' equally weighted expressed preferences – remain in place. The purpose of the following two chapters, by contrast, is to defend those institutions from objections raised in recent literature by proponents of elitist and chance-based alternatives. We begin with the former, by considering the competence objection to universal suffrage, advanced by Jason Brennan.

6. Universal Suffrage and the Competence Objection

Elitist scepticism of democracy has a venerable history. Plato (1974, p. 282) famously saw democracy as akin to a ship taken over by an incompetent, drunken crew with no interest in listening to the ‘true navigators’ aboard. Concerned that equal voting rights would lead to ‘class legislation’ and deleterious consequences, Mill (1861, ch. 8) advocated distributing votes in proportion to citizens’ education levels. Schumpeter (1950, p. 262) wrote that “...the typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyses in a way which he would readily recognise as infantile within the sphere of his real interests.” This chapter responds to the latest round of elitist scepticism – the *competence objection*, articulated by Jason Brennan (2011b; 2016). The chapter is in five sections. Section one sets out the competence objection, showing that it potentially applies to democratic government at two levels – the individual, and the collective. Section two considers the individual level application, section three the collective level. Section four considers the comparative merits of epistocracy, Brennan’s preferred replacement for democracy. Section five concludes.

6.1. The Competence Objection

Brennan holds that universal suffrage is unjust. His arguments therefore entail that democracy, as we defined it in the introduction, is also unjust. The nature of Brennan’s objection is simple enough: universal suffrage is unjust because it violates the *competence principle*, as follows (Brennan, 2011b, p. 704);

It is unjust to deprive citizens of life, liberty or property, or to alter their life prospects significantly, by force and threats of force as a result of decisions made by an incompetent or morally unreasonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way.

The competence principle is intuitively appealing. Brennan (2011b, pp. 702-4; 2016, pp. 151-5) asks us to imagine a jury trial in which the jurors ignore the evidence,

evaluate the evidence irrationally, or convict out of prejudice against the defendant. Even if the jury's decision is correct, it will intuitively lack authority and legitimacy – i.e. the defendant will have no moral obligation to comply with the jury's decision, and the state will have moral no right to enforce it. The competence principle offers an attractive explanation of these intuitions. Criminal proceedings threaten to coercively deprive citizens of life, liberty, and property, and to significantly alter their life prospects. The competence principle requires that decisions over criminal guilt and innocence be made competently. Where they are not, the rights of the defendant are violated, and decisions will lack authority and legitimacy in consequence.

Universal suffrage, Brennan claims, is much the same (Brennan, 2011b, 700-10; 2016, ch.s 6 & 7). Decades of political science has demonstrated that the majority of citizens are 'rationally ignorant' with respect to political matters. 79% of Americans cannot name either of their state's senators (Hardin, 2006, p. 180). 75% do not know the length of senators' terms in office (Caplan, 2006, p. 95). Only 38% were 'sure' that the USSR was not a member of NATO at the height of the Cold War (Page and Shapiro, 1992, p. 9). Moreover, many voters are downright irrational – cognitively biased in their acquisition and retention of information about politics in ways that favour their particular groups (Brennan, 2016, ch. 2).¹⁵² Many others hold repugnant moral views. The political decisions over which these 'incompetent' voters are permitted to exercise control under universal suffrage threaten to coercively deprive citizens of life, liberty and/or property, and/or alter their life prospects significantly. This violates the competence principle. Universal suffrage (and, therefore, democracy) is, as such, unjust. Democratic decisions, as such, lack authority and legitimacy.

The competence objection might be thought to might apply to universal suffrage in two ways. First, voters as *individuals* might make decisions in an objectionably incompetent manner. Second, the electorate considered *collectively* might make decisions in an objectionably incompetent manner. These amount to conceptually distinct objections. Let us refer to the former as the *individual competence objection*, and the latter as the *collective competence objection*. Brennan himself appears to

¹⁵² See also Caplan (2006).

endorse both the individual competence objection (e.g. Brennan, 2011b, pp. 702-3, 709), and the collective competence objection (e.g. Brennan, 2011b, p. 710; 2016, ch.s 6-7). We shall consider each in turn.

6.2. The Individual Competence Objection

The individual competence objection holds that universal suffrage is unjust because it empowers voters, considered as individuals, to exercise power over decisions of great significance for others' interests in an incompetent, morally unreasonable manner.

The most obvious response to the individual competence objection involves simply denying that ignorant voters will necessarily vote in an incompetent manner. An important strand of empirical research shows that ignorant voters are able to reliably mimic the conduct of informed voters by employing informational shortcuts of various kinds – e.g. taking cues from opinion-leaders (Lupia and McCubbins, 1998). However, the trouble with this response is that it is at best a partial defence. Not all ignorant voters employ informational shortcuts. Some take cues from persons who are themselves incompetent. Universal suffrage, by the lights of the individual competence objection, will still be unjust to the extent that it requires the votes of such persons be counted alongside others'. Moreover, the competence principle requires that political decisions be made in an epistemically competent *and morally reasonable* manner. It is unclear whether the fact that individuals can mimic the behaviour of informed voters by taking cues thereby shows that their voting behaviour is morally reasonable.

A better response, I think, would concede that many voters are incompetent in the way Brennan describes, but deny that that fact establishes that universal suffrage is unjust. To see this, we must first ask why Brennan thinks subjection to the power of incompetent voters is unjust in the first place. Brennan is explicit: subjection to incompetent decision-making violates persons' claims against *exposure to undue risk*.¹⁵³ He writes (Brennan, 2011b, p. 708);

¹⁵³ See Brennan (2011b, pp. 705, 708; 2016, pp. 154, 159, 230, 235-6).

The governed have a right not to be exposed to undue risk in the selection of policy or of rulers who will make policy. When elections are decided on the basis of unreliable epistemic procedures or on the basis of unreasonable moral attitudes, this exposes the governed to undue risk of serious harm.

The individual competence objection, then, relies upon two premises. First, that citizens have rights against the imposition of undue risk. Secondly, that individual voters impose such risks upon others, violating their rights. I reject the latter. Voters do impose risks upon their fellow citizens. But these risk-impositions do not plausibly amount to rights-violations. To see why, we need to get more precise. Let us begin by defining the imposition of risk *simpliciter* as follows;

A imposes risk on B by Φ ing if and only if A's Φ ing has a non-zero probability of causing harm to B.¹⁵⁴

We can calculate the magnitude of the risk imposed by some action by multiplying the magnitude of the possible harm in question by the probability that that action will bring it about. More formally;

$$R_i = P_i H_i$$

i = a given person

R_i = the risk imposed upon i by some other person's action

P_i = the probability that that action will cause harm to i

H_i = the magnitude of the possible harm to i .

In the political domain, persons are harmed via the selection of candidates or policies that leave them worse off than they would otherwise have been under some alternative candidate or policy. H_i , then, is simply the difference between the options.¹⁵⁵ Suppose a vote was to be held between A, which will impose a net cost of \$550 on i , and B which will impose a net cost of \$500 on i . Either A or B will inevitably

¹⁵⁴ I assume the standard counterfactual account of harm: A harms B by Φ ing if and only if A's Φ ing leaves B worse off than they would otherwise have been.

¹⁵⁵ For simplicity, I assume there are only two items on the agenda.

be the outcome. Selecting A, then, harms *i* to the tune of \$50, the cost they would have avoided under B. More formally;

$$H_i = [C_i(A) - C_i(B)]$$

$C_i(A)$ = the net cost to *i* of A's victory

$C_i(B)$ = the net cost to *i* of B's victory.

P_i is given by the probability of an individual voter's being decisive, and voting for the option that is worse for *i*. One is decisive if and only if one is the tiebreaking voter. Suppose the vote between A and B was to be taken by Jane and 10 others. If the vote is tied 5-5, and Jane casts the final ballot, she will be decisive. If the vote is split 6-4 in favour of A, A will be victorious, however Jane votes. One's vote will impact others' interests – and potentially harm *i* – only if one is decisive.¹⁵⁶ A decisive vote will obviously harm *i* only if it is cast for the item on the agenda that is worse for *i*. More formally, then;

$$P_i = p(D)p(VH_i)$$

$p(D)$ = the probability that a given voter will be decisive

$p(VH_i)$ = the probability that that voter will vote for the option which is worse for *i*.

So, to a first approximation, we can express the risk imposed upon *i* by a given voter as follows;

$$R_i = p(D)p(VH_i)[C_i(A) - C_i(B)]$$

The trouble is that R_i will always be too trivial to amount to a rights violation because $p(D)$, even in close elections, is always asymptotically close to zero. Geoffrey Brennan and Loren Lomasky (1993, p. 57), for example, estimate that $p(D)$, in a vote between A and B, with 200,001 voters with an average probability of voting for A of 0.51, is 1 in 12.3 million. Even if H_i is large, then, R_i will be trivial. Suppose that, under

¹⁵⁶ This does not mean one exercises no influence of any kind where one is not decisive (c.f. Goldman, 1999) – only that such influence has no impact on others' interests.

Brennan and Lomasky's conditions, A was guaranteed to leave *i* worse off than B by \$10 000. A vote for A, then, imposes a risk of the following magnitude upon *i*;

$$R_i = 1/12.3m \times \$10\,000 = \$0.00813\dots$$

This risk is already very minor. Yet, more realistic cases will yield risks of a much lower magnitude. There is much uncertainty over the likely consequences of electoral choices – which policies the candidates will implement if elected, what their impact will be, whether ‘exogenous variables’ (e.g. natural disasters) will impact the political system, and so on (c.f. Brennan and Lomasky, 2000, pp. 71-2). R_i must be discounted in light of such uncertainty, as follows;

$$R_i = p(D)p(VH_i)[C_i(A) - C_i(B)]U$$

U = the discount rate for uncertainty.

Furthermore, parties generally (though not exceptionlessly) propose relatively similar policy platforms with respect to their likely impact upon voters' interests, given the centripetal pressures of majority rule (Downs, 1957). Suppose, then, a more realistic difference between A and B of \$1000 in net cost to *i*, and a discount for uncertainty of 40%. The risk to *i* of a vote for A, then, will be;

$$1/12.3m \times \$1000 \times 0.6 = \$0.0004878\dots$$

Citizens surely do not have moral rights against the imposition of risks as trivial as this. And, indeed, this case still assumes a small electorate and a very close election. A larger electorate and/or wider margin would lower $p(D)$, and therefore R_i , still further.¹⁵⁷ The individual competence objection fails.

Brennan might insist that citizens *do* have claims against the imposition of trivial risks.¹⁵⁸ This invites an important objection. Virtually all our behaviour imposes

¹⁵⁷ Gelman et al. (2012), for example, estimate that an average voter in the 2008 US Presidential election had around a 1 in 60 million chance of decisiveness.

¹⁵⁸ Brennan might, in reply, appeal to *subjective* probabilities of decisiveness. No voter, after all, can be *certain* that their vote will not be decisive. However, voters can be *extremely confident* that their votes will neither be decisive, nor non-trivially affect the probabilities of the outcomes. Voting, then, should make no non-trivial difference to individuals' subjective probabilities.

risks of some kind upon others. If trivial risk impositions constituted rights violations, then virtually *all* our actions would be rights-violating. We are plainly not ‘morally paralysed’ in this way (c.f. Hayenhjelm and Wolff, 2012, pp. 31-2). We should reject this line of argument.

Alternatively, Brennan might point out that the aggregate risk imposed by individual voters upon the citizenry *as a whole* is non-trivial. This, too, is unpromising. Suppose Ronald and Gerald are the only two people in a park. Ronald is walking his dog. There is a risk that the dog will attack Gerald. Suppose this risk is too trivial to violate any right of Gerald’s. Now suppose 10, 000 other people enter the park, each of whom is subject to the same risk. For Ronald’s conduct to thereby be rendered unjust, it must be the case that the increase in numbers somehow causes his conduct to violate some right or rights held by the others in park. Yet that is totally implausible. It does not seem remotely intuitive to think that Gerald, say, suffers a rights violation *merely* because others are now subject to the same risks as he.¹⁵⁹ Whether agents have rights against the imposition of some risk does not plausibly depend upon how many others are subject to that same risk. The individual competence objection fails.

6.3. The Collective Competence Objection

The collective competence objection holds that universal suffrage is unjust because it empowers voters, considered collectively, to exercise power over others’ interests in an incompetent, morally unreasonable manner, thereby exposing citizens to undue risk.

One initially tempting strategy, here, is to respond to the collective competence objection rather as we responded to the individual competence objection: by claiming that the risks imposed by the collective upon each citizen are trivial. There are a range of formal models showing that the aggregation of rather low-quality inputs can constitute an extremely reliable means of selecting the highest-quality item on the agenda – e.g. the Condorcet jury theorem (c.f. List and Goodin, 2001), and the diversity-trumps-ability theorem (c.f. Landemore, 2013b). Though it is

¹⁵⁹ Though, the numbers might affect Ronald’s duties for other reasons (c.f. Parfit, 1986, pp. 73-5).

certain that the collective will be decisive in any given choice, the probability of the collective selecting the worse option (again, unlike the individual case) is extremely low. The degree of risk imposed upon each citizen by decision-making under universal suffrage is also, therefore, very low.

This response fails.¹⁶⁰ To see why, suppose that the electorate faced a choice between A and B. A is better than B all-things-considered. However, A would also impose severe wrongful harm upon the members of some small minority.¹⁶¹ Suppose that B would not impose such harms (but is worse in some other respects). These models show that a decision by universal suffrage between A and B would be virtually certain to yield A. But, notice, A is the more harmful option for the minority group. Choosing democratically, then, would impose a high degree of risk upon the members of that group, the fact that A is superior to B notwithstanding.

The general point, here, is simply that different alternatives on the democratic agenda will almost always be better and worse for different groups. Where it is certain that at least one of the items on the agenda will be selected, it is almost always also certain that the interests of some group or other will be set back. Political decisions almost always impose non-trivial risks upon some group or other. We cannot, as such, respond to the collective competence objection by seeking to minimise the magnitude of the risks imposed.¹⁶²

The right strategy, I think, is to argue that the impositions of such risks do not (in general) amount to rights-violations. Consider;

John has run the only bakery in town for ten years. Jess has just opened a competing bakery. Jess' actions have a substantial probability of leaving John worse off than he would otherwise have been. He may lose business to Jess, and his welfare may decline in consequence.

¹⁶⁰ There are also important questions as to whether the assumptions of these epistemic models are satisfied in real-world democracies (Brennan, 2016, ch. 7; Caplan, 2006; Estlund, 2008, ch. 12).

¹⁶¹ Let us suppose that these losses are counterbalanced by substantial gains to others.

¹⁶² Epistocracy is not immune from this concern, either. The proposals between which epistocracies will have to make choices will *also* be better for some and worse for others. Setbacks to some groups' interests are inevitable; and so the imposition of non-trivial risks upon citizens is also inevitable.

Jess' actions impose non-trivial risks upon John. Yet, it is surely false that she has violated his rights. John has no right to the benefits of his long insulation against competition. This demonstrates an important point. Only where some possible setback to our interests would, were it to eventuate, constitute *wrongful harm* – i.e. violate some right of ours – is the imposition of a *risk* of such a setback plausibly wrongful. If an actual setback to some interest would not amount to wrongful harm, there no reason to accept that risks of such setbacks do so.

Certainly, decisions made by universal suffrage *can* violate citizens' rights. A decision to impose a law banning interracial marriage, for example, would clearly do so. I see no reason for democrats to disagree with the idea that voters, considered collectively, act wrongly where they impose non-trivial risks of such violations. Democrats, after all, do not generally believe that democratic authority is unlimited. Rather, they believe democracies may impose a limited range of laws – i.e. those consistent with individuals' fundamental rights. For that reason, they characteristically endorse counter-majoritarian measures designed to protect such rights (e.g. judicial review) against hostile majorities. Risk-based concerns add weight to the case for such institutions.

However, the collective competence objection is also supposed to apply in other cases. The competence principle condemns coercive subjection to incompetent decision-making in *any* matter concerning life, liberty, property, and/or significant life prospects (Brennan, 2011b, p. 704; 2016, ch. 6). For the objection to go through, then, it must be the case that any democratically imposed risks of setbacks to these interests constitute wrongful harms. That, in turn, would require it to be the case that any *actual* setback to these interests amounts to wrongful harm. Otherwise, we would have no reason to accept that the imposition of *risks* of such setbacks is wrongful. That, however, is totally implausible. None of us has the right to be governed in a manner maximally conducive to our wellbeing. Many of our interests simply do not ground fundamental rights-claims. I surely am not wrongfully harmed by decisions that increase my tax rate by 2% (though this would deprive me of property), lower the speed limit in school zones (though this would restrict my liberty), or prohibit me from becoming a snake oil salesman (though this affects my

life-prospects), for example. I therefore have no legitimate complaint against the democratic imposition of *risks* of such setbacks.

Moreover, democrats generally deny that subjection to decisions consistent with individuals' fundamental rights, made under universal suffrage, is rights-violating. For a range of reasons, democrats hold that where collective decisions must be made, and there is disagreement over what the *content* of such decisions ought to be, citizens have claims that such decisions be made according to processes which extend all citizens equal opportunities for political influence – i.e. *democratic* processes, including universal suffrage.¹⁶³ Subjection to the resultant decisions is the necessary correlate of extending citizens the opportunities for influence to which they are entitled. After all, unless citizens were required to obey the decisions in question, it could hardly be said that citizens enjoyed influence over collective decision-making *at all* (c.f. Kolodny, 2014b, pp. 314-7; Shapiro, 2004, pp. 435-9). Democratic decision-procedures, in other words, are *authoritative*. In virtue of that fact, citizens are not wronged by subjection to decisions made under universal suffrage.

Democrats, then, can offer a two-part response to the collective competence objection. They can concede that the democratic imposition of risks of fundamental rights-violations is unjust. This costs democrats nothing. No plausible democratic theory holds that democracies may violate such rights in the first place. The institutions required to prevent such risk-impositions will be the very same as those required to prevent actual rights-violations (e.g. judicial review). With respect to decisions that do *not* violate fundamental rights, however, the risks imposed by democratic decision-making are not rights violating. The citizenry might be ignorant, irrational, and morally unreasonable. But, within limits, we are simply required to bear the risks of universal suffrage. To the extent that the competence principle entails otherwise, democrats should reject the competence principle.

Two responses suggest themselves. First, Brennan might argue that my response proves too much. If democrats reject the competence principle, then they will be

¹⁶³ See, among many others, Anderson (2009), Christiano (2008), Estlund (2008), Kolodny (2014b), and Pettit (2012).

unable to explain what is wrong with subjection to incompetent jury decisions and the like. However, there is nothing to prevent democrats from endorsing a narrower competence principle which applies to decisions, such as those made by juries, which do not share the distinctive features of democratic decisions, as set out in the preceding paragraphs.

Brennan (2016, pp. 151-8) thinks that jury decisions and political decisions share relevantly similar features, such that the same competency requirements should apply to both. It seems to me, however, that there is a crucially important distinction between the two. Political decisions affect the interests of *all* citizens, since they concern the general rules according to which our collective affairs are to be structured, including those according to which the state brings criminal proceedings against its citizens. Citizens, in virtue of that fact, have positive, equal claims to exercise some degree of influence over those rules. Jury decisions are brought *pursuant to* political decisions over which all persons – the defendant included – had fair opportunity to exercise influence. In effect: political decisions concern which social rules we ought to *have*, whereas jury decisions are a matter of *applying* those rules. Citizens have claims to exercise influence over the former, but not over the latter. There is nothing inconsistent in holding that different principles apply in each case.

Secondly, Brennan might argue that democrats' arguments for the authority of democratic decision-procedures are wrong. Indeed, this is precisely what Brennan (2016, ch.s 3-5) thinks. There is much that might be said in response to many of Brennan's criticisms.¹⁶⁴ But even supposing he were right, the collective competence objection would not automatically go through. That would require both an account of citizens' rights against risk-impositions that Brennan does not provide, and an argument showing that systems of universal suffrage impose such risks. Accounts of the right against risk impositions have proven extraordinarily difficult to develop (c.f. Hayenhjelm and Wolff, 2012). Still, let us suppose Brennan could produce such an account, defeat all the arguments for the authority of democratic procedures, *and* show that universal suffrage wrongfully imposes risk. It is hardly likely, in that case, that democracy will be the only system impugned. To

¹⁶⁴ There are also a range of important views he fails to discuss (e.g. Kolodny, 2014b).

the extent that human agency is to be involved in political decision-making, and to the extent that humans' decision-making capacities making are deficient in the ways Brennan (2016, ch. 2) himself catalogues, *all* means of political decision-making are likely to involve the imposition of substantial risks. If democracy lacks authority and legitimacy, so too (it is likely) will all the feasible alternatives. Our choice among decision-procedures, then, will simply be a matter of which is likely to realise the best results, all-things-considered. Democracy – in particular, universal suffrage – has a very strong case to make in this respect (c.f. Christiano, 2011; Estlund, 2008; Landemore, 2013b; Sen, 1999).

6.4. Epistocracy

Brennan (2016, ch. 8) denies this, holding that *epistocracy* – systems in which political influence is distributed in accordance with citizens' knowledge levels – would realise higher-quality results than democratic systems of universal suffrage.¹⁶⁵ This claim is hard to evaluate.¹⁶⁶ There are no real-world epistocracies whose performance we might compare to democracies. There are also many possible epistocratic systems, each of which is likely to realise different results. Mill's (1861, ch. 8) plural voting scheme, wherein all citizens receive at least one vote, with better-educated citizens receiving additional votes, would constitute a fairly moderate form. A more extreme form would disenfranchise all citizens unable to pass competency tests (c.f. Caplan, 2006, pp. 154-8). Brennan (2016, ch. 8) outlines a range of other proposals.

Still, there are good reasons to be sceptical of all such proposals. Epistocracies aim to increase the relative influence of those who are more knowledgeable, and decrease the relative influence of those who are less knowledgeable. Levels of political knowledge are strongly correlated with socioeconomic status (Althaus, 2003, pp. 14-7). In practice, then, epistocracies will tend to diminish the influence of the worse-off. That, I suggest, is likely to exacerbate elite bias in political decision-making by weakening politicians' incentives to attend to the interests of the worse-off.

¹⁶⁵ There are also obvious non-instrumental objections to epistocracy – e.g. that it would establish relations of unequal political power. See Kolodny (2014b) for an eloquent argument to this effect.

¹⁶⁶ Though, see Hill (2016).

Brennan denies this too, appealing to evidence showing that those whose influence would be diminished under epistocracy generally (a) are systematically misinformed with respect to the policies that would promote their interests, and (b) in any case tend to vote sociotropically, rather than self-interestedly (Brennan, 2016, pp. 226-8). If anything, Brennan claims, their disenfranchisement should lead to *better* outcomes with respect to their interests.

The macro-level evidence set out in chapter two, however, tells a different story. There is a clear relationship between the rates at which social groups participate, and the rate at which governments allocate resources to those groups. Ending the disenfranchisement of women (Aidt and Dallal, 2008), the unwealthy (Abou-Chadi and Orłowski, 2015), and African Americans (Husted and Kenny, 1997, pp. 56-7, 76) certainly seems to have caused governments to attend much more closely to such groups' interests. Increased political participation by the worse-off – with (Birch, 2009b, p. 131; Carey and Horiuchi, 2017; Chong and Olivera, 2008; Fowler, 2013; O'Toole and Stroble, 1995) or without (Avery, 2015; Carey and Horiuchi, 2017; Mueller and Stratmann, 2003) compulsory voting – certainly appears to cause governments to allocate a greater proportion of social resources to the worse-off. This body of evidence suggests powerfully that disenfranchising the worse-off *en masse* is likely to lead to substantially more unequal outcomes than systems of universal suffrage, however such individuals behave when they are in the polling booth.¹⁶⁷

As I say, there are no real-world epistocracies from whom data might be gathered. The above evidence, then, is not definitive. But it is, as far as I can see, the best we have to go on, and certainly seems to militate against epistocracy.

Equality, of course, is not all that matters. Epistocracy would likely have some comparative virtues (elections might be cheaper were there fewer votes to count,

¹⁶⁷ This is not to deny that such results are puzzling, given the facts concerning voter behaviour to which Brennan appeals. There are numerous ways in which that puzzle might be resolved. It may be, for example, that politicians erroneously believe that citizens vote in a sufficiently well-informed, self-interested manner, and allocate resources on the basis of that belief. Ultimately, however, we need not resolve such puzzles. My objection to epistocracy is to the macro-level results it is likely to engender, whatever the underlying mechanisms in virtue of which those results obtain.

for example). Still, equality is very important. The comparative virtues of epistocracy would need to be powerful indeed to outweigh democracy's apparent advantage on this score. We should remain open to the possibility. However, a great deal more evidence of epistocracy's instrumental virtues would need to be marshalled to render such a claim even remotely plausible.

6.5. Conclusion

I have argued that universal suffrage does not (in general) impose unjustifiable risk upon the citizenry. Insofar as the competence objection relies upon the idea that universal suffrage, and thus democracy, imposes such risks, the competence objection fails. Perhaps subjection to the power of incompetent voters is objectionable for some other reason. Nothing I have said here has sought to show otherwise. Still, in the absence of an argument to that effect, I think democrats can safely reject the competence objection.

7. Against Lottocracy

Most political theorists believe that democratic systems, in which (at a minimum) all adult citizens enjoy the right to vote, and decisions are made via the aggregation of voters' expressed preferences, constitute the sole legitimate form of government. History, along with results from the social sciences, seems to vindicate the idea that democracy delivers higher-quality outcomes than alternative means of making political decisions.¹⁶⁸ Democracy is also widely thought to constitute the best feasible expression of equal respect for persons in the political domain.¹⁶⁹ Yet real-world democracies have been plagued by difficulties in recent times: the corruption of elections, low-quality outcomes, elite bias, and so on (Gilens, 2012; Hacker and Pierson, 2011). Perhaps as a result, a number of theorists have begun to challenge the democratic orthodoxy. Amongst the most interesting of these challenges are those which have been issued by proponents of *random selection* in the political process. 'Lottocracy', it is argued, promises to retain or improve upon the egalitarian appeal of democracy, while realising higher-quality outcomes.¹⁷⁰ This chapter responds on democracy's behalf, arguing that appropriately designed democratic institutions are significantly more attractive than these proposals on both egalitarian and instrumental grounds.

As set out in chapter one, I shall understand democracy to refer to systems for the making of political decisions in which all sufficiently competent adult citizens have the right to vote, and decisions are made by the aggregation of voters' equally weighted expressed preferences, or by their elected representatives. I will understand 'lottocracy', by contrast, to refer to a set of procedures for the making of political decisions in which, wholly or partially, aggregative decision-making and/or universal suffrage are substituted for random selection of some kind.¹⁷¹ I stress that I am employing the terms 'lottocracy' and 'democracy' in these ways merely for expository convenience. My only goal is to defend the institutions characteristic of contemporary democratic societies against the challenge posed by proponents of

¹⁶⁸ See, among many others, Christiano (2011), and Sen (1999).

¹⁶⁹ See, among many others, Beitz (1989), Christiano (2008), and Kolodny (2014b).

¹⁷⁰ I borrow the term 'lottocratic' from Guerrero (2014).

¹⁷¹ Athens, for instance, was a partial lottocracy on this definition, insofar as some important political officials – e.g. members of the council of 500 – were randomly selected, while generals were elected (Manin, 1997, ch. 1).

these lottocratic alternatives, by appeal to independent moral considerations. I remain neutral with respect to whether these lottocratic proposals are ‘democratic’ in some deeper sense.

I have no argument to offer against all possible uses of random selection in politics.¹⁷² My goal is rather to argue against three specific lottocratic proposals, each of which has received recent, sophisticated defence in the literature;

Lottery voting: The substitution of aggregative decision-making for a process in which social choices are made by the random selection of a single vote from among those cast. Lottery voting is compatible with – though does not require – universal suffrage.¹⁷³

Suffrage by lottery: The substitution of universal suffrage for the random selection and enfranchisement of some fraction of the population. Suffrage by lottery is compatible with – though does not require – aggregative decision-making.¹⁷⁴

Representation by lottery: The substitution of both universal suffrage and aggregative decision-making for random selection as a means of selecting political representatives.¹⁷⁵

The chapter proceeds as follows. Section I argues that the egalitarian arguments in favour of each of these models of lottocracy rest upon a series of implausible normative commitments, and that the comparative egalitarian merits of democracy are generally superior. Section II argues that the instrumental case for each of these models of lottocracy is at best inconclusive and, at worst, deeply problematic.

¹⁷² Indeed, in chapter five I defended a proposal which relies upon the device of random selection.

¹⁷³ Lottery voting is defended by Amar (1984) and Saunders (2010a). For other discussions, see Ackerman (1980, pp. 285-9), Elster (1989, pp. 87-92), and Jones (1983, pp. 170-3).

¹⁷⁴ Suffrage by lottery is defended by López-Guerra (2011; 2012; 2014). See also Brennan (2014, pp. 35-9).

¹⁷⁵ Advocates of representation by lottery include Barnett and Carty (2008), Buchstein (2010), Burnheim (1985), Callenbach and Phillips (1985), Carson and Martin (1999), Engelstad (1989), Goodwin (1984), Guerrero (2014), Landemore (2013a), Leib (2004), McCormick (2011), Mueller et al. (1972), Sintomer (2010), Stone (2011), Sutherland (2008), and Zakaras (2010).

7.1. Political Equality and Lottocracy

The distribution of a good among a group of persons by fair lottery (i.e. a lottery in which all outcomes are equiprobable) gives all persons an equal chance of enjoying the good in question. The lottocratic proposals under consideration each give citizens equal chances of enjoying *political power* of various kinds – having one’s vote selected as decisive (lottery voting), holding political office (representation by lottery), or enfranchisement (suffrage by lottery). The most common egalitarian arguments in favour of these systems over democracy, then, are variants on the following:¹⁷⁶

The Equal Chances Claim (ECC): That some version of lottocracy satisfies the requirements of political equality as well as, or better than, democracy because it affords citizens equal chances for political power of some kind.¹⁷⁷

ECC admits of two interpretations that are not always carefully distinguished. The direct interpretation holds that the requirement that citizens be afforded equal chances of enjoying political power of the relevant sort – decisiveness, holding political office, or enfranchisement – is a *fundamental* requirement of political equality. *ECC* is true, then, just in virtue of the fact that the relevant model of lottocracy satisfies that requirement. The indirect interpretation, by contrast, holds that giving citizens equal chances of decisiveness, political office, or enfranchisement is an equally or more efficient means of satisfying some *other* requirement or requirements of political equality than democracy. I will argue that *ECC* is false on both interpretations, beginning with the direct interpretation.

7.1.1. The Direct Interpretation

¹⁷⁶ Throughout this section, I shall presuppose that the requirements of political equality are at least partially non-instrumental, since that is also the view also presupposed by the theorists with whom I engage.

¹⁷⁷ Versions of *ECC* are advanced by, among others, Buchstein (2010, p. 437), Carson and Martin (1999, p. 34), Engelstad (1989, p. 27), Guerrero (2014, pp. 168-9), López-Guerra (2011, p. 213), Saunders (2010a; 2010b), and Sintomer (2010, p. 482).

The argument I offer against the direct interpretation of *ECC* is simple: political equality does not fundamentally require that citizens enjoy equal chances of decisiveness, political office, or enfranchisement. The fact that some lottocratic proposal would deliver equal chances of any of these forms of political power is therefore, in itself, no reason to accept that these systems satisfy the requirements of political equality better than, or as well as, democracies.

Equal respect in the distribution of goods is a matter of *distributive fairness*. Fairness, in turn, requires distributing goods by fair lottery only where, at least, these three conditions hold;¹⁷⁸

- (1) There are a number of persons each with positive claims to some good, and
- (2) Each person's claim is at least roughly equal in strength, and
- (3) The equal distribution of that good among those persons is, for some reason, impossible.

We must get clear on the notion of *claim* invoked here. A has a claim against B for some good C if and only if A has a right against B for C, and B has a correlative duty to provide C to A. Promises, for instance, give rise to claims. If Barry promises to take Andrew to lunch, Andrew has a right against Barry that Barry take him to lunch, and Barry has a correlative duty to do so. Fairness is concerned only with the relative degree to which individuals' claims are satisfied.¹⁷⁹ Suppose Barry has promised to take Andrew and Charlie, but not Daniel, to lunch. Suppose he takes Andrew to lunch, but not Charlie or Daniel. Charlie may complain that Barry has treated him unfairly by satisfying Andrew's claim but not his own. Daniel, by contrast, might have an interest in Barry's taking him to lunch, but since he had no *claim* against Barry that he do so, he cannot complain that Barry has acted unfairly. The rationale for (1), then, is simply that only where individuals have claims to some good is there potentially an issue of fairness, at all, with respect to its distribution.

¹⁷⁸ This much, at least, is common ground among political theorists who have considered the issue. See, for example, Broome (1990-1, pp. 90-100), Kornhauser and Sager (1988, pp. 492-5), and Stone (2011, ch.s 3-4).

¹⁷⁹ This, too, is common ground among the relevant political theorists. See Broome (1990-1, pp. 90-100), Kornhauser and Sager (1988, pp. 492-5), Stone (2011, ch.s 3-4), and Wasserman (1996).

The rationale for (2) is that fairness requires us to account for the varying *strength* of individuals' claims. Suppose Joan has died after a long illness, leaving \$1000 to her children Jack and Jill, but no instructions on how to divide it between them. Jack despised his mother, taking on no costs to care for her in her illness. Jill loved her mother dearly, caring for her at substantial personal cost for many years. Suppose the executor of Joan's estate were to propose distributing the \$1000 between Jack and Jill by the toss of a coin. Whoever wins gets to keep the \$1000 in its entirety. Jill might reasonably object that her claim to the \$1000 is much stronger than Jack's, given the character of their respective relationships with Joan. As such, giving him an equal chance of getting the money is unfair.

The rationale for (3) is simply that fairness, ideally, requires that individuals' claims be satisfied in proportion to their strength (Broome, 1990-1). Where individuals have positive, equal claims to some good, and it is possible to satisfy such claims equally, fairness therefore requires that each have an equal share. It is only in cases where doing so is impossible (and where some unfairness is therefore inevitable) that we may look to alternatives. Distribution by lottery is, thus, a kind of 'second-best'. If citizens cannot share equally in some good, they can at least enjoy equal chances of getting the good.

So, in order for *ECC* to hold, on the direct interpretation, for lottery voting, representation by lottery, or suffrage by lottery, (1), (2), and (3) must be jointly satisfied for the goods of decisiveness, political office, or enfranchisement respectively. My charge is simply that (1), (2), and (3) are not jointly satisfied for decisiveness, political office, or enfranchisement. The direct interpretation of *ECC*, therefore, fails.

Lottery Voting and Equal Chances for Decisiveness

Saunders (2010a, p. 149) holds that political equality requires that: "Each group member must have an equal (chance of) influence over the group's decisions." Majority rule (the form of aggregative decision-making against which Saunders argues, in particular) often fails to satisfy this requirement because of persistent minorities – groups who are too small to have any prospect of ever getting their

way.¹⁸⁰ Under lottery voting, by contrast, each person has an equal chance of having their vote selected as decisive. Each, therefore, has an equal chance of enjoying the power of decisive influence. Saunders (2010a, pp. 155-60) concludes that lottery voting better satisfies the requirements of political equality than democracy. Hence;

ECC_{LV}: Lottery voting satisfies the requirements of political equality better than democracy because it affords citizens equal chances of decisiveness over political decisions.

I think the direct interpretation of *ECC_{LV}* is false. It is implausible that individuals have positive, equal claims to decisive influence over political decisions. Condition (1), therefore, fails. There is no fundamental requirement of political equality, then, that citizens enjoy equal chances of decisiveness.

It is certainly true that individuals have claims to decisiveness over *some* decisions – e.g. the decision as to which religion they will adopt. But political decisions are distinctive in at least four respects. First, political decisions concern the rights and interests of all those who are subject to them, not merely the agent(s) who make such decisions. Second, such decisions are enforced by coercion and threats thereof. Third, for the vast majority of individuals, subjection to political decisions is unchosen. Most citizens are born into their states, and cannot leave without incurring very substantial costs. Finally, for the same reasons, the effects of political decisions are not reasonably avoidable for most individuals. An agent that enjoyed decisiveness over some political decision, then, would enjoy the power to, over the domain with which that decision is concerned, unilaterally determine rules with which other citizens will be forced to conform. There seems to me to be no intuitive attraction to the idea that anyone has a claim against the political community to power of that kind. Certainly, Saunders himself offers no argument to this effect.¹⁸¹

Moreover, powerful egalitarian considerations militate against the notion of claims to decisiveness. A central insight of egalitarian theorising of the last two decades is

¹⁸⁰ It is by no means clear that Saunders is right, here. After all, persistent minorities' votes are accorded the same weight as everyone else. Their complaint, then, is plausibly better understood in terms of *preference satisfaction*, rather than *influence*.

¹⁸¹ Though – to be clear – his argument explicitly relies upon an appeal to distributive fairness of the kind under discussion.

that equal respect for persons requires that citizens relate to one another on terms of *social equality*.¹⁸² Precisely what relations of social equality consist in is a matter of ongoing philosophical dispute. Yet, a point of convergence between virtually all accounts is that citizens must not be able to exercise asymmetric power and authority over others.¹⁸³

Asymmetries in power and authority are constitutive features of paradigmatic relations of social inequality. The lord occupies a superior position to his servants partially in virtue of the fact that he enjoys a substantial degree of power and authority over them. Husbands in the Victorian era stood in positions of superiority over their wives partially in virtue of the fact that they enjoyed a great deal of power and authority over their wives' access to resources, liberties and so on. As Baker (2015, pp. 80-1) puts it, "...the exercise of power by one person or group over another is clearly an unequal relationship... if power relations consist in some people controlling others, then it seems contradictory to talk about *egalitarian* relations of power." If citizens are to stand in relations of social equality, then, in Scheffler's (2015, pp. 25) phrase, persons' "...equally important interests – understood broadly to include the person's needs, values, and preferences – should play an equally significant role in influencing decisions made within the context of the relationship." Relations wherein some enjoy asymmetric power and authority over others, then, are objectionably unequal.¹⁸⁴

Political decisions, as we have seen, involve the exercise of coercive power and authority over the citizenry. To the extent that citizens enjoy power over political decisions, they therefore enjoy power and authority over their fellow citizens. If social equality requires that citizens stand in relations of equal power and authority, then, it must necessarily require that citizens stand in relations of equal *political* power.¹⁸⁵ Political societies, then, must respect the following requirement;

¹⁸² We discussed this approach in chapter four. For important, more detailed statements, see Anderson (1999), Kolodny (2014b), and Pettit (2012).

¹⁸³ See, for example, Baker (2015, pp. 80-5), Kolodny (2014b), Pettit (2012, ch.s 3-4), and Scheffler (2015, pp. 34-7).

¹⁸⁴ It is important to distinguish, here, between power and mere influence. As we argued in chapter three, inequalities in latter are not objectionable from an egalitarian point of view.

¹⁸⁵ This is, moreover, a particularly *urgent* requirement of social equality, given that relations of political inequality will tend to create and magnify non-political inequalities.

Social Equality: Citizens should stand in relations of social equality. Relations of social equality consist at least partially in relations of equal political power.

Decisiveness necessarily involves the exercise of political power over others on asymmetric terms. Political decisions involve the exercise of power and authority over others, and *what it is* for one to be decisive over a political decision is for that decision to counterfactually depend upon one's will, and one's will alone. The idea, then, that any citizen has a *claim* to decisiveness – to decide unilaterally which set of social rules is to be coercively enforced upon the citizenry as a whole – is deeply inconsistent with *Social Equality*. Accepting the (very plausible) idea that we do not have claims to place others in a social position inferior to our own, I deny that individuals have claims to decisiveness. Political equality, therefore, does not fundamentally require that citizens be afforded equal chances of decisiveness. *ECC_{LV}* fails, on the direct interpretation.

Representation by Lottery and Equal Chances of Political Office

Guerrero (2014, pp. 169) writes that though democracies accord all citizens "...an equal say in the electoral process, only a select few actually have political power, and... not everyone has anything close to an equal *chance* of having political power. [Representation by lottery] thus arguably better reflects egalitarian ideals, since anyone might wield political power, and everyone has an equal chance of doing so." Guerrero seems, clearly, to be advancing another version of *ECC*;

ECC_{RBL}: Representation by lottery satisfies the requirements of political equality better than democracy because it affords citizens equal chances of holding political office.

The charge against the direct interpretation of *ECC_{RBL}* is virtually the same as the charge against *ECC_{LV}*. Political equality does not fundamentally require that citizens enjoy equal chances for political office because citizens do not have claims to hold political office. Condition (1), therefore, fails. There are two reasons to reject the idea that citizens have claims to political office. First, it is deeply counterintuitive.

Each representative is one of a small number of individuals with the power to exercise control over decisions to be coercively imposed upon the citizenry as a whole. Representatives – especially under systems like representation by lottery in which citizens have no means of holding them to account – thereby enjoy substantially greater power and authority than ordinary citizens. The political community does not intuitively *owe* asymmetric power and authority of that kind to anyone. We do not think, for example, that losers in fair elections have some legitimate complaint against the citizenry for failing to satisfy some claim of theirs.

Second, such claims would conflict deeply with *Social Equality*. Asymmetries of power and authority are constitutive of relations of social inequality, and representatives enjoy asymmetric power and authority over the citizenry. I think, then, that it is implausible that individuals have positive moral claims to hold such offices. I do not, of course, deny that political systems must rely heavily upon representatives, nor that citizens have a range of other claims with respect to political office (e.g. to fair opportunities to compete in elections), nor that there are moral reasons in virtue of which certain individuals should occupy political offices (e.g. that some candidate has won a fair election). I shall return to these issues below. All I am arguing is that it is implausible that anyone has a *claim* to those offices. For that reason, on the direct interpretation, ECC_{RBL} is false.

Proponents of lottery voting or representation by lottery might respond that the objection from social equality shows only that the powers of decisive voters or representatives (as the case may be) must be limited by the substantive requirements of social equality. This misses the point. The objection is *not* that extending citizens equal chances of decisiveness or political office might lead to *outcomes* that are inconsistent with citizens' equal standing but, rather, that the relation between the citizenry and randomly selected decisive voters, or representatives, would *itself* be one of objectionable inequality. Even if the powers of decisive voters or representatives were to be limited, asymmetries of power and authority would still obtain.

More to the point, then, one might deny that the relation that would obtain between the citizenry and persons randomly selected to be decisive voters or representatives

would be objectionably unequal. Relations of social inequality proper, it might be argued, obtain (a) for an extended period of time and (b) in virtue of particular features of the agents in question.¹⁸⁶ Victorian-era marriages, for example, were objectionably unequal, insofar as wives, *as women*, were subordinated to husbands over the *entire* course of their married life. By contrast, the relation that would obtain between randomly selected decisive voters or representatives would be temporary, and would not obtain in virtue of any particular features of the persons in question.

I deny that (a) or (b) are necessary features of relations of social inequality, however. Let us take (b) first. Imagine Edward and Francesca are both selected at random such that Edward is to be Francesca's slave for life. Edward is obviously placed in a position of objectionable inferiority to Francesca, though not in virtue of any particular features of either party. Now consider (a). Imagine a society in which, every day, a single person is randomly selected to be the slave of another randomly selected person for that day only. These slave-master relations would hold only for brief periods of time. Yet, nevertheless, such relations seem obviously objectionable on egalitarian grounds. Neither (a) nor (b) is intuitively necessary for relations of social inequality.

One could insist on these conditions, anyway. Insisting on (b) would be extremely costly, insofar as doing so would entail that Edward and Francesca's relationship is not objectionably unequal. Insisting on (a) would be to little avail. The relations of inequality that would obtain between the citizenry and randomly selected decisive voters or representatives *would* hold for extended periods of time. Each randomly selected representative would enjoy power over all political decisions taken during their term of office; potentially several years. In the case of decisive voters, though they would enjoy power over only a single decision, the *ongoing enforcement* of that decision would represent the ongoing coercive imposition of their will upon other citizens. These defences, then, are unsuccessful.

Suffrage by Lottery and Equal Chances of Enfranchisement

¹⁸⁶ Anderson (2012, pp. 42-3) seems to endorse this view.

López-Guerra (2011, pp. 213) writes that suffrage by lottery “...honours the ideal of political equality by giving everyone the same chance of being selected...” By giving each an equal chance of enfranchisement, suffrage by lottery satisfies the requirements of political equality at least as well as democracy. Hence;

ECC_{SBL}: Suffrage by lottery satisfies the requirements of political equality as well as democracy because it affords citizens equal chances of enfranchisement.¹⁸⁷

Unlike *ECC_{LV}* and *ECC_{RBL}*, there are good reasons to accept that (1) and (2) are satisfied for *ECC_{SBL}*. Individuals have positive, equal claims to enfranchisement grounded in their fundamental interests in access to the means of political power. Instrumentally, political power is a valuable means of protecting and promoting one’s fundamental interests (c.f. Christiano, 2008, pp. 88-95; Christiano, 2011; Mill, 1869, pp. 526-7), offers opportunities for the expression of one’s political attitudes (c.f. Brennan and Lomasky, 1993, p. 196), and affords citizens opportunities for the development of valuable traits like public-spiritedness and self-esteem, as well important capacities such as the ability to weigh the competing merits of different proposals, and engage in moral thought and argument (c.f. Pateman, 1970, ch. 2; Rawls, 1971, p. 234).

Political power is also intrinsically valuable for the contribution it makes to individual autonomy. Autonomy involves, among other things, enjoying control over oneself. Social conditions can exert a powerful degree of control *over* individual agents. Agents are therefore more and less autonomous with the degree to which they enjoy control *over* those conditions. Political institutions exercise a very substantial degree of control over citizens. The autonomy citizens enjoy (at least in the political domain) therefore varies positively, other things equal, with the degree of political influence they enjoy.

On these bases, then, I think that citizens have positive, equal claims to access to those means of political power consistent with the other requirements of political

¹⁸⁷ *ECC_{SBL}* is more moderate than *ECC_{LV}* and *ECC_{RBL}*, insofar as it claims only that suffrage by lottery is *as good* as democracy from an egalitarian perspective.

equality.¹⁸⁸ Amongst these means is enfranchisement. The vote, in its own right, is itself a means of exercising influence – affording individuals the ability to causally contribute to the process by which political outcomes are realised (Goldman, 1999). It also plays a role in rendering other forms of influence efficacious. Governments have incentives to respond to the demands of political protestors, for example, because (and where) their actions threaten to influence citizens’ voting behaviour. We should accept that citizens have positive, equal claims to the franchise. (1) and (2) are satisfied. However, it is obvious that (3) is not. The existence of systems of universal suffrage all over the world demonstrates that it is perfectly possible (at least, in the vast majority of cases) to distribute the franchise equally. That being the case, distributive fairness requires that the franchise be distributed equally. As we argued above, distributive fairness requires that claims be satisfied in proportion to their strength. Therefore, where citizens each have positive, equal claims to some good, fairness requires that that good be distributed equally, provided it is possible to do so. It follows, then, that we should accept the following requirement;

Equal Access: Citizens should have positive, equal access to the franchise.

Distributing the franchise by lottery obviously violates *Equal Access*. Some citizens’ claims to the franchise would be satisfied where others’ claims, of equal weight, would not be. Suffrage by lottery would, as such, create avoidable distributive unfairness. For this reason, we should also reject the direct interpretation of *ECC_{SBL}*.¹⁸⁹

No version of *ECC* succeeds, on the direct interpretation. What, then, of the indirect interpretation?

7.1.2. The Indirect Interpretation

Recall that the indirect interpretation of *ECC* holds that giving citizens equal chances of decisiveness, political office, or enfranchisement, compared to democracy, is an

¹⁸⁸ This final clause is crucial, insofar as it rules out (for the reasons outlined above) the possibility that individuals might have claims to decisiveness or political office.

¹⁸⁹ One might respond by arguing that suffrage by lottery will yield an equal distribution of the franchise over the long term. I discuss this response below.

equally or more efficient means of satisfying some requirement or requirements of political equality other than a direct requirement to afford citizens equal chances of one or other of those forms of political power. Responding to the indirect interpretation, then, will require us to take a stand on what these other requirements of political equality are. Fortunately, we have done this work already, in arguing for *Social Equality* and *Equal Access*. The argument that follows, then, is straightforward: democracy, at least when implemented in concert with a suitable array of background institutions will, in general, more closely approximate the requirements of *Social Equality* and *Equal Access* than representation by lottery, suffrage by lottery, or lottery voting. Democracy, as such, has stronger egalitarian merits than the lottocratic proposals under consideration.

Democracy and Representation by Lottery

Democracy straightforwardly beats representation by lottery with respect to *Equal Access*. Representation by lottery fails to extend the franchise (or anything equivalent) to *anyone*, whereas democracies secure equal and positive access to the franchise for all citizens under the institution of universal suffrage.

The comparison between democracy and representation by lottery with respect to *Social Equality* is more complex. Given the well-acknowledged difficulties of pure direct democracy, democrats must be content, I think, to leave the majority of political decisions to elected representatives. Inequalities of power between citizens and representatives are inevitable under both democracy, and representation by lottery. The question, then, is which system better *regulates* these inequalities.

I also think that, for two reasons, appropriately structured democratic arrangements better satisfy *Social Equality*.¹⁹⁰ First, following Kolodny (2014b, pp. 317-8), we might argue that democracy affords citizens the capacity to see their elected representatives as their *delegates*, rather than as agents exercising some superior form of power over them. The idea is familiar from the interpersonal domain. Joan might delegate the power to make medical decisions to her doctor without thereby *subordinating* herself to her doctor, for example. Representatives

¹⁹⁰ We take up the issue of *how* democracies ought to be structured in the following section.

held to account at regular elections might, in a similar fashion, be seen as the citizenry's delegates, insofar as they are subject to the citizenry's control. We cannot plausibly view representatives selected by lot in this manner. In the absence of elections, citizens have no means of exercising control over their representatives. We should hardly think, by analogy, that if Joan were to have a doctor selected at random to make medical decisions for her, over whom she lacked any means of control, that she has delegated authority to that doctor.

A second, more modest line of argument would hold simply that the *magnitude* of the asymmetries that obtain between elected representatives and citizens is smaller under (suitably designed) democratic arrangements than under representation by lottery. The relation between elected representatives and citizens is therefore less objectionable on egalitarian grounds than that which would obtain between randomly selected representatives and citizens. Electoral systems afford the citizenry a measure of control *over* their representatives at the ballot box (and via those forms of influence that depend upon universal suffrage – e.g. protest) that representation by lottery does not. These mechanisms are, of course, deeply imperfect. Yet *no* such mechanisms obtain under representation by lottery. The inequalities of political power that obtain between citizens and representatives will, as such, generally be worse under representation by lottery.¹⁹¹

Democracy and Suffrage by Lottery

Democracy obviously beats suffrage by lottery with respect to *Equal Access*. The point of suffrage by lottery is to enfranchise only that fraction of the citizenry that is randomly selected. Democracies, by contrast, enfranchise *all* citizens (or, at least, ought to do so). Moreover, since the franchise constitutes a form of power over political decisions, and since (as we have argued) power over political decisions

¹⁹¹ Proponents of representation by lottery will respond by arguing, as many have done (e.g. Guerrero, 2014; McCormick, 2011; Zakaras, 2010), that elections engender elite bias, creating enormous inequalities of informal political power in favour of social elites. This is an unconvincing reply. Even if we grant that elite bias would be worse under democracy than representation by lottery, it doesn't follow that democracy is worse, from an egalitarian perspective than representation by lottery. After all, even where elite bias is fairly severe, citizens nevertheless retain some degree of influence in the political process under democratic arrangements. Under representation by lottery, on the other hand, citizens enjoy no influence at all. By necessity, then, inequalities are greater in magnitude under the latter than under the former. We shall engage more directly with this line of argument in the following section.

constitutes a form of power and authority over others, the unequal distribution of the franchise establishes a relation of objectionable social inequality. Democracies, by distributing the franchise equally, establish no such relations. For that reason, democracy *also* better satisfies the requirements of *Social Equality* than suffrage by lottery.

The proponent of suffrage by lottery might respond that the repeated, random reassignment of voting rights ought to yield approximately equal access to the franchise over the *long term*. There are important reasons to be sceptical of appeals to long term equality (c.f. McKerlie, 1989; Temkin, 1993, ch. 8). But even setting these aside, the appeal to long term equality does nothing to address the objection from social inequality. The fact that suffrage by lottery might lead to long term equality of access to the franchise does not show that the short-term inequalities in access to the franchise it would engender would not constitute relations of social inequality. Rather, it simply shows that citizens can expect to occupy positions of superiority and inferiority for roughly equal amounts of time across the course of their lives. Better, surely, to eliminate social inequality of this kind altogether by distributing access to the franchise equally over the short and long term.

Democracy and Lottery Voting

I am inclined to think that democracy and lottery voting (provided it is coupled with universal suffrage) do equally well with respect to *Equal Access*. Both would extend voting rights to all citizens. Both would also afford citizens a form of positive, equal political power. Democracy, via suitably egalitarian aggregation methods (e.g. majority rule), gives each the opportunity to causally contribute to the production of political outcomes by casting an equally weighted vote. Lottery voting allows each to affect the probabilities of the various outcomes being adopted to an equal degree. Moreover, there is no reason to think citizens would derive any more or less participatory benefits from voting under either system.

Democracy, however, does substantially better with respect to *Social Equality*. We have already argued that the relation between the decisive voter and the citizenry at large would constitute a relation of objectionable social inequality. Lottery voting

guarantees that, for each political decision, someone will occupy the position of the decisive voter. Of course, aggregative methods such as majority rule leave open the possibility of a single voter's being decisive – though the probability of this occurring is always asymptotically close to zero (Brennan and Lomasky, 1993, ch. 4). Moreover, under aggregative decision-making, decisiveness is a mere by-product of the equal and positive weighting of all citizens' votes. The decisive voter simply happens to cast the ballot that tips the scale one way or the other. Under lottery voting, by contrast, *only* the decisive individual's preferences are accorded any weight at all in determining the social choice.

I have not sought to defend the idea that real-world democracies, even under favourable conditions, perfectly satisfy either *Social Equality*, or *Equal Access*. Indeed, they fall short in many ways. All I have sought to defend is the claim that democracies will in general *do better* than the three models of lottocracy considered in this chapter. That is a powerful reason to hold that democracy is better justified than these lottocratic alternatives. It is not decisive, however. The comparative instrumental merits of lottocracy might be so overwhelming as to outweigh these considerations. Let us, then, consider the instrumental case for lottocracy.

7.2. The Instrumental Case for Lottocracy

In this section, I challenge the idea that any of the three versions of lottocracy under discussion would reliably yield higher-quality outcomes than democracy. This will not be straightforward. There are no real-world lottocracies. There is, therefore, only limited empirical evidence to draw on.¹⁹² There are many ways in which each of these proposals might be implemented, and very different conditions under which their implementation might be attempted. Our discussion, then, must necessarily be somewhat speculative. My aim is to establish two relatively modest claims, each of which undermines the instrumental case for lottocracy. First, that there are reasons to doubt whether many of the most important benefits claimed

¹⁹² Though, of course, there have been empirical studies of *similar* institutions – e.g. deliberative mini-publics (c.f. Dryzek, 2010, ch. 8; Goodin and Dryzek, 2006).

for these proposals are likely to materialise. Second, that each of these proposals is likely to entail costs that appropriately structured democracies avoid.

7.2.1. Lottery Voting

The most important instrumental argument for lottery voting is that it would promote deliberation (Saunders, 2010a, pp. 161, 174-5). Political actors would have stronger incentives to maximise their share of the vote under lottery voting. Aggregative decision-making mechanisms guarantee victory to items on the agenda that receive some threshold level of popular support – 50%+1, for example, under simple majority rule. Under lottery voting, however, the outcome is never certain. Each item's probability of emerging as the social choice is simply the proportion of the vote it receives. A candidate polling at 60% is certain to win under majority rule, but has only a 60% chance of victory under lottery voting. This, Saunders argues, means that political actors would be more likely to engage deliberatively with the citizenry, in an attempt to maximise their vote-share.

The benefits of deliberation, to be sure, are substantial (Curato et al., 2017). The trouble, however, is that society-wide deliberation is, in general, a highly inefficient strategy for attracting mass support, for the simple reason that citizens have little interest in engaging in it.¹⁹³ Gathering information and engaging in deliberation over political matters is costly in time and effort. Most citizens, then, rationally take very little interest in political activities like deliberation, given their very minimal capacity to make any difference to political outcomes by doing so (Fishkin, 2009, ch.s 2-3).¹⁹⁴ Politicians, thus, have little incentive to seek to engage citizens in deliberation, for the simple reason that citizens have little incentive to engage with any such attempt. It is hard to see quite how lottery voting is supposed to make any

¹⁹³ It is important to distinguish, here, between society-wide deliberation of the kind Saunders seems to have in mind, and deliberation in mini-publics. As we discussed in chapter five, the latter form of deliberation can have – and, indeed, has had – substantial effects upon citizens' voting behaviour. Moreover, where citizens are extended the opportunity to participate in mini-publics, a substantial proportion characteristically take up the opportunity to do so (Smith, 2009, pp. 82-3).

¹⁹⁴ We should not overstate the point. Survey evidence indicates that most citizens do *talk* about politics. Steiner (2012, pp. 38-49) makes two critical points, however. First, that citizens almost certainly over-report the degree of political discussion they engage in on such surveys. Second, even taking survey results at face value, the vast majority of such talk does not plausibly amount to *deliberation*. Though, it may be that 'talk' of this sort, while not deliberative in itself, might plausibly contribute to the wider 'deliberative system' (Mansbridge et al., 2013)

difference here. Citizens' chances of making a difference to the final outcome, though they will sometimes be higher than they would have been under majority rule, will remain vanishingly small under lottery voting (Elster, 1989, pp. 87-8). It is hard to see, then, why citizens would have any greater incentives to engage in deliberation under lottery voting, and still harder to see why political actors should have any greater incentive to try and get them to do so.

It is worth noting, as well, that political parties have a range of less desirable, counter-deliberative strategies they regularly employ in an attempt to maximise their proportion of the vote under aggregative decision-making. Negative advertising campaigns, for instance, which aim to depress opposition turnout. Lottery voting would, presumably, *intensify* parties' incentives to employ these strategies.

There are reasons, moreover, to expect lottery voting to yield poorer quality decisions than aggregative decision-making. Aggregative decision-making in general – and majority rule in particular – tends to encourage competition among a relatively small number of alternatives. An agent has little incentive to place an item on the agenda they believe has insufficient chance of securing the level of support necessary for victory.¹⁹⁵ As noted already, the chance of an option being selected as the social choice under lottery voting is simply the proportion of the vote it receives. Incentives to place items on the agenda likely to gain only limited support would therefore be substantially more powerful under lottery voting. We should therefore expect the number of alternatives on the agenda to substantially increase – and lower-quality decisions to follow. Evidence suggests that as the number of items on the agenda increases, citizens' competency for choosing between those items declines (Lau et al., 2014, pp. 241-3). Moreover, many of these 'new' options (be they legislative proposals, or candidates for office) will be more extreme than those which would have made their way onto the agenda under majority rule. Such options almost never attract majority support, and so have virtually no chance of success under aggregative decision-making. Not so under lottery voting. Indeed, options of this sort are statistically certain to be selected eventually. Lottery voting, then, seems unlikely to produce higher-quality outcomes than democracy.

¹⁹⁵ Setting aside the very rare phenomenon of agenda manipulation. See Mackie (2003, ch.s 7-8).

7.2.2. Suffrage by Lottery

The principal instrumental argument for suffrage by lottery is that it would realise higher-quality decisions (López-Guerra, 2014, pp. 29-37).¹⁹⁶ López-Guerra claims that, given widespread voter ignorance, universal suffrage frequently results in low-quality decisions.¹⁹⁷ Shrinking the number of voters might increase the epistemic competency of the electorate, and thereby improve the quality political decisions, in three ways. First, programmes of voter education which might improve the competency of the electorate would be excessively costly to operate under universal suffrage. Shrinking the size of the electorate, however, would drastically lower the costs of operating such programmes. Suffrage by lottery, then, would enable governments to take steps to increase the amount of political knowledge possessed by voters. Second, shrinking the size of the electorate, other things equal, increases the probability of each voter's being decisive. That increases the expected value of voting and, in turn, the expected value of gathering information. Suffrage by lottery, then, might be expected to mitigate the problem of rational ignorance. Finally, selecting a subset of the population and charging them with the responsibility of choosing the next government might induce a sense of civic duty among these persons, causing them to vote in a more epistemically responsible manner.

These arguments do not withstand scrutiny. In order to avoid the risks of unacceptable demographic bias, López-Guerra (2011, pp. 214-5) insists that the group of citizens to be enfranchised must be large enough to yield a statistically representative sample of the population at large. Each social group, he insists, must be demographically represented as well as it would have been under universal suffrage. Given the diversity of modern states, this will require the enfranchisement of fairly sizeable proportion of the population. This, in turn, means that voters will still have a very minimal probability of decisiveness. As discussed in the previous chapter, for example, Brennan and Lomasky (1993, pp. 57) show that in a two-option choice between A and B, where voters are on average 0.51 likely to vote for

¹⁹⁶ López-Guerra is more and less forthright about the prospect of these decisions translating into higher-quality *outcomes* in different pieces. Compare López-Guerra (2011), and López-Guerra (2014, ch. 2).

¹⁹⁷ This is by no means uncontroversial, given voters' ability to employ informational shortcuts, as discussed in previous chapters.

A, if there are 200, 001 voters (around 0.137% of the 146, 311, 000 Americans currently registered to vote), the probability of any voter's being decisive is around 1 in 12.3 million. The payoffs to individual voters of getting their way would still need to be utterly enormous for it to be instrumentally rational for individuals to consent to incur the costs of undergoing voter education, or expend independent effort to become better informed.¹⁹⁸

Being singled out as among the select few with the civic duty to elect the next government would perhaps motivate *some* persons to act in an epistemically responsible manner. Yet 'civic duty' norms of this kind generally enjoy widespread compliance only where individual noncompliance is likely to have a direct impact on the group, is easily observable, and can be readily sanctioned (c.f. Olson, 1965, pp. 60-5). One has no interest in bearing the costs of compliance if noncompliance makes no difference to the group, or will not be punished. Needless to say, such conditions will not be satisfied under suffrage by lottery. The same result will still be virtually certain to emerge however much information any individual gathers, the diminished size of the electorate notwithstanding. Without some extremely draconian system of surveillance, it would be impossible to detect and therefore deter failures to gather information.

There is, as such, little reason to expect that suffrage by lottery would make much appreciable difference to the behaviour of the electorate. Moreover, suffrage by lottery would also entail important costs.¹⁹⁹ Diminishing citizens' opportunities for political participation diminishes their access to the goods political participation affords, as discussed above. I think it doubtful, then, that suffrage by lottery would produce higher-quality outcomes than democracy.

7.2.3. Representation by Lottery

¹⁹⁸ Even if we suppose an electorate one tenth the size (20, 001 persons), the probability of any voter's being decisive (holding our other assumptions fixed) is still a very distant 1 in 481 (Brennan and Lomasky, 1993, pp. 57). The payoffs to individual voters of getting their way would still need to be very substantial for it to be instrumentally rational for them to bother gathering information. One could insist on compulsory voter education, but only at the cost of a severe demandingness objection.

¹⁹⁹ We might appeal to the Condorcet Jury Theorem to show that shrinking the total number of voters would diminish the epistemic competency of the electorate (List and Goodin, 2001). Whether this is so will depend upon whether the assumptions of the theorem are satisfied, over which there is much controversy.

The most important instrumental argument in favour of representation by lottery is that it would produce higher-quality decisions by mitigating elite bias. Two arguments to this effect have been presented. First, given the costs of running for election, democracies tend to disproportionately select for social and economic elites as officeholders. Selecting representatives randomly would eliminate this effect (McCormick, 2011, pp. 170-88; Zakaras, 2010, pp. 460-1). Second, elections afford social and economic elites opportunities to ‘capture’ – i.e. exert disproportionate influence over – politicians. These opportunities are numerous: manipulating pre-selection processes, manipulating candidates’ media presentation, campaign finance contributions, and so on. The elimination of elections would close off these avenues of influence (Guerrero, 2014). The end result, it is argued, should be decisions that attend more closely to the interests of the citizenry as a whole, rather than social elites.

Yet there is much that could be done to limit elite bias in democracies short of abolishing elections. The most obvious measures would involve regulating campaign finance more closely. Donors, particularly those who give large amounts, are overwhelmingly from wealthier social groups (Gilens, 2012, ch. 8). Campaign contribution limits, then, give candidates incentives to seek donations from a more socio-economically diverse pool of persons, and have been linked to more redistributive policy outcomes (Eom and Gross, 2007; Flavin, 2015).²⁰⁰ Similarly, the public financing of elections provides the means for persons whose candidacy would otherwise have been unviable to enter electoral contests. This has the effect of diminishing incumbency advantage, and providing more powerful incentives for elected officials to attend to the interests of their constituents, rather than their campaign donors (Donnay and Ramsden, 1995; Eom and Gross, 2006; Mayer et al., 2007). There are a range of other possibilities. As discussed in detail in chapter, two, there is substantial evidence that compulsory voting mitigates elite bias in decision-making by virtually eliminating socioeconomic bias in turnout. Other possible measures include giving control of electoral districting to independent bodies to

²⁰⁰ We might also look to donor matching programmes. In some elections in New York City, for example, each dollar given by an individual donor under \$175 is matched by a factor of 6 to 1 by government. Early indications suggest that poorer citizens are more likely to donate, and that candidates are more likely to attempt to appeal to such persons, where such arrangements are in place (Genn et al., 2012).

prevent gerrymandering, banning representatives from owning shares in, or taking up positions with, corporations while in office and for a suitable period of time afterwards, funding high-quality public media, and so on.

Admittedly, none of these measures can hope to *eliminate* elite bias. Yet representation by lottery would leave crucial avenues of elite influence open. As Lindblom (1982) points out, politicians are bound to give a substantial degree of influence over policymaking to the preferences and interests of elites, given the degree to which the realisation of other important social goods depends upon elites' behaviour.²⁰¹ This, simply, is because of the economic power elites command. Suppose some government wishes to raise corporate taxes. Their doing so would give corporations incentives to, *inter alia*, take jobs offshore, lay off staff, withdraw investment, and so on. Governments of all kinds are bound to (and, surely, ought) take such consequences seriously, given the potential gravity of the consequences for their citizens. They are, as such, simply bound to accommodate the preferences and interests of elites to a substantial degree. The selection of representatives by lottery would do little to undermine this dynamic.

Moreover, powerful actors would retain their ability to *lobby* representatives. Lobbying involves the transfer of "...information in private meetings and venues between interest groups and politicians, their staffs, and agents" (Figueiredo and Richter, 2014, p. 164). This is an avenue of influence that favours social and economic elites, given that they are substantially more likely to have the resources and organisational capacity to form and finance the operations of lobby/interest groups. Certainly, this is true of the *status quo*. Expenditures by corporations and trade associations presently comprise around 84% of overall interest group lobbying expenditures in the United States, for example (Figueiredo and Richter, 2014, pp. 165-6). A broad range of empirical evidence suggests that lobbying is an effective means of exercising influence in a wide range of policy areas, over both elected and (importantly, for our purposes) unelected officials.²⁰² Indeed, lobbying is debatably the primary means by which elites seek to influence the political process. Evidence indicates that, at least the United States, lobbying expenditures

²⁰¹ See also Dryzek (2000, ch. 4).

²⁰² See Figueiredo and Richter (2014, pp. 163-9) On unelected officials, see McKay and Yackee (2007), and Yackee and Yackee (2006).

outstrip campaign finance expenditures by a factor of 5 to 1 (Figueiredo and Richter, 2014, pp. 163-9).

There is reason, moreover, to expect that representatives selected by lot would be susceptible to elites' attempts to influence their conduct. Incumbents cannot be re-elected under representation by lottery, unless they are randomly selected a second time. That, in turn, would create a situation very similar to that created by the imposition of term limits in elective bodies. Term limits radically decrease the number of incumbents, and radically increase the number of new appointees. Evidence suggests that, where term limits are imposed, the relative power of lobby/interest groups increases (Miller et al., 2011; Sarbaugh-Thompson et al., 2004, ch.s 3, 9). This, generally, is because newly appointed representatives typically possess less information than incumbents, and are therefore forced – or are at least substantially more likely – to rely upon information provided to them by lobbyists. There is a clear risk, it seems to me, of a similar dynamic under representation by lottery. It is unclear, then, whether representation by lottery enjoys any substantial advantage over appropriately structured democracies with respect to elite bias.

An important secondary line of argument, pursued most prominently by Landemore (2013a), appeals to the deliberative benefits of representation by lottery.²⁰³ The legislative bodies convened under representation by lottery would constitute a kind of 'mini-public', similar to those discussed in chapter five. There is little evidence that mini-publics tend to suffer seriously from elite bias.²⁰⁴ The evidence discussed in chapter five shows that such groups appear to have the capacity to deliberate in a well-informed, impartial manner, devise novel and effective policy proposals, and so on. Indeed, on many metrics, the quality of deliberation which takes place within well-structured mini-publics is substantially better than that which takes place within elective legislatures (Steiner, 2012, ch. 9). Landemore (2013a, p. 1227) declares that we can "...extrapolate from the performance of regular citizens in these deliberative contexts to what the epistemic performance of an actual Parliament

²⁰³ See also Leib (2004), Sintomer (2010), and Zakaras (2010, pp. 465-7).

²⁰⁴ This is not entirely uncontroversial. Such exercises frequently suffer from socioeconomic bias in their membership which, debatably, impacts upon the outcomes produced (Fung, 2007b, pp. 162).

based on random selection would be like.” On that basis, she claims that representation by lottery ought to deliver higher-quality decisions than democracy.

I am much impressed by deliberative mini-publics. I am sceptical, however, as to whether the evidence gathered from studies of mini-publics provides much indication at all as to the quality of deliberation likely to take place in the legislative bodies that would be convened under representation by lottery. There is a crucial difference between such bodies and other mini-publics. Namely, participants in the former would enjoy direct lawmaking power. That is likely to adversely impact the quality of deliberation in two ways.²⁰⁵ First, such bodies would be a target for outside intervention (i.e. lobbying) in a way that deliberative polls, citizens’ assemblies and so on are not. The latter, after all, do not wield direct power of any sort. There is, as such, little reason for outside actors to seek to intervene upon their proceedings. Second, citizens are likely to deliberate in a more self-interested manner. Deliberating in an altruistic manner is ‘cheap’ in deliberative polls and the like, for the simple reason that the *outputs* of such bodies have no direct bearing upon real-world policy and, therefore, upon participants’ material interests.²⁰⁶ Things would be very different under representation by lottery. The outputs of such bodies would have real legal consequences, and thus impact directly upon participants’ interests.

The *degree* to which these factors are likely to undermine the quality of deliberation is, admittedly, hard to estimate. There are no (contemporary) instances of deliberative mini-publics having been endowed with lawmaking authority.²⁰⁷ There is, as such, little empirical evidence to draw upon. Whatever the extent of these risks, however, there are other means of leveraging the benefits of small-group deliberation which avoid these concerns almost entirely (together with the egalitarian concerns discussed in the previous section). Many have argued for holding regular deliberative mini-publics whose role would be to advise elected officials on matters of public policy (e.g. Dahl, 1989, pp. 340-1; Dryzek, 2010, ch. 3;

²⁰⁵ As a general matter, there is substantial evidence that the quality of deliberation which occurs within such fora is highly sensitive to way in which those fora are structured (Fung, 2007b).

²⁰⁶ Brennan and Lomasky (1993, pp. 22-4) make a very similar point in relation to voting. The infinitesimally small probability of one’s vote being decisive lowers the relative cost of voting in accordance with one’s moral attitudes rather than one’s interests.

²⁰⁷ Though some have played an important role in the policy process – e.g. the BCCA.

Fishkin, 2009). Others, myself included, have defended citizens' assembly processes with the power to put policy proposals to public referenda (e.g. Fung, 2007a, pp. 451-3; Pettit, 2012, pp. 231-2; Thompson, 2008b). I am also unpersuaded, then, of the deliberative case for representation by lottery. There are good grounds for scepticism as to the quality of the deliberation likely to take place within such bodies, and there are better means of leveraging the benefits of small-group deliberation.

Representation by lottery would undeniably have some advantages. It would eliminate the monetary costs of elections and incentives for representatives to pork-barrel, for example (Mueller et al., 1972). However, it also carries a number of serious costs, several of which have been set out by Pettit (2012, pp. 200-5). I do not agree with all of Pettit's claims. Two, however, strike me as plausible. First, such arrangements would threaten a range of basic liberties by diminishing their role in social life. Electoral systems provide individuals with valuable opportunities for the exercise of those liberties necessary for political organisation – speech, thought, travel and so on. Abolishing elections would diminish the role of these liberties in public life, lowering the barrier to their curtailment. Second, such systems are likely to fail to address important policy concerns. Electoral competition creates incentives for representatives to ascertain and address the concerns of the citizenry. Such incentives do not obtain under representation by lottery.

I would add two further costs. First, eliminating elections would eliminate a range of important opportunities for political participation, limiting citizens' access to the goods such opportunities afford. Second, and more pressingly, such systems risk unsuitable persons being selected to wield power over their fellow citizens. Democracies, of course, sometimes also select persons unsuitable for power. But there are countervailing pressures in favour of competence in democracies. Politicians have powerful incentives to perform at least minimally competently to promote their chances of re-election. Parties have interests in promoting the perception that they are competent to govern. Voters exercise some degree of judgement as to the quality of their elected officials. No such pressures obtain under representation by lottery. For these reasons, then, I think that there is also

substantial reason to doubt the instrumental merits of representation by lottery, all things considered.

7.3. Conclusion

We are now in a position to state our conclusions. First, the positive egalitarian case advanced in favour of the models of lottocracy defended in recent literature – lottery voting, representation by lottery, and suffrage by lottery – depends upon a series of implausible normative commitments. Second, the comparative egalitarian merits of appropriately structured democracies are, in general, substantially stronger than those of any of the models of lottocracy under consideration. Finally, the instrumental merits of lottocracy are generally weaker than those of democracy (or, at least, of universal suffrage and aggregative decision-making). Most of the positive benefits claimed for these systems seem unlikely to materialise. And each of these systems seems likely to entail costs which appropriately structured democracies would avoid.²⁰⁸

No-one should deny that contemporary democracies are problematic in very many respects. But, I think, the solutions lie in the reform of democratic institutions to better respect the political equality of citizens and improve the quality of outcomes realised.

²⁰⁸ This is not to deny that randomness has any role to play in contemporary democratic societies – indeed, in chapter five, I defended a proposal which relies crucially upon the device of random selection. My only claim is that the proposals discussed in this chapter are unattractive.

8. Conclusion

It is surely uncontroversial that contemporary democratic societies are incompletely just. It is no surprise, then, that on the basis of the arguments defended in the preceding chapters, some democratic institutions are in need of fairly radical reform, while others are defensible more or less as they are.

Its critics' many protestations notwithstanding, societies are justified in imposing compulsory voting as a means of preventing non-voters from unfairly free-riding upon the efforts of citizens who choose to vote. Bans on vote buying are justified as a means of preventing persons from expressing objectionably disrespectful attitudes towards their fellow citizens. Universal suffrage, and decision-making by the aggregation of citizens equally weighted expressed preferences, are superior to the alternatives on offer from elitists and lottocrats.

The blanket exclusion of children from the franchise, by contrast, is in need of fairly radical reform. No good argument is to be found which might legitimate the exclusion of children much above the age of twelve. Important reforms are also needed to the way in which democratic institutions account for the interests of groups to whom elected officials are characteristically under-responsive. The creation of a citizens' assembly for the cognitively disabled is one possible reform which might be valuable in this respect.

I noted in the introduction that democratic theorists have, with notable exceptions, tended to neglect institution-level questions, preferring to focus upon more abstract issues. It is my hope that the essays in this dissertation have gone some distance to redressing that imbalance. Yet the issues considered in the preceding chapters represent just a fraction of those which merit closer investigation. Recent political events have thrown two such issues into particularly sharp relief.

First, gerrymandering. The practice of manipulating electoral boundaries for partisan advantage has become widespread in many democracies, particularly the United States. Most of us believe the practice to be wrong, as a matter of principle. But is this so? Is gerrymandering always wrong? If so, why? Might there be some

purposes (e.g. to ensure the representation of minority groups in legislatures) for which manipulating electoral boundaries is justified? Philosophers have had very little to say on these questions, despite increasing interest in the social sciences, and their obvious real-world significance.

Second, pre-selection processes. Particularly, primary elections in the United States. It is generally acknowledged that such processes lead to bads of various kinds. Highly intense partisans substantially over-participate (relative to other groups) in such elections. This, very plausibly, leads to the selection of more extreme candidates, and gives rise to unfortunate incentives for elected officials. Yet such processes do apparently have desirable democratic qualities. Democracy requires that the people have control not merely over which items on the political agenda are selected, but also over the composition of the agenda itself. This is precisely what primaries aim to provide with regards to the candidates on the ballot at elections for political office. There would be value in sorting through the various goods and bads of primary elections (and similar processes), and considering whether there might be alternatives which retain the democratic appeal of primaries, while minimising the costs.

I hope, in the future, to work on both these issues. Doubtless, there are a great many other such issues with which it would also be worth engaging.

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