

# **‘EXPERT REVIEW’: ON RECONCILING POLITICS OF EXPERTISE AND DEMOCRACY**

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Submitted to Department of Political Science, Central European University

In partial fulfillment of the requirements for the degree of Doctor of Philosophy

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November 2014

## **Declaration**

This dissertation contains no material accepted for any other degree(s) at any other institution(s).

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November 30<sup>th</sup>, 2014

## Abstract

This dissertation addresses the problem of scientific expertise in democracy. At its center is the recognition that democratic procedural fairness seems to come into conflict with expert scientific input into political decision-making, as expert judgment can run against the perceived fair relationship between political equals in a democracy. The tension is about the place of truth in politics, since experts are understood as people who have better access to answering new questions in their field and to ‘track the truth’ more reliably than a layperson. Privileging experts in some of our political decision-making, however, raises fears about the subversion of democratic equality because political outcomes can no longer be reliably traced back to an equitable sense of self-government of the citizenry.

In seeking a definition of expertise, the work relies on social epistemology and sociology of expertise, drawing a portrait of experts as deeply immersed in specialist habits and practices, whose truth-tracing testimonies, publicity, and standards of inquiry bestow on them a tentative, context-dependent epistemic authority. This definition of expertise is closely connected with the question of their recognition by the lay public, i.e. how they can signal their reliability and trustworthiness.

Although the question of expertise in politics can be presented as a problem of proper institutional context, the work rejects the view that it can be resolved by positing experts as political representatives. The work emphasizes the importance of formal authorization criteria in representation and shows that scientific expertise demonstrates the need for delimiting the concept of representation.

Instead, the work argues that this conflict can be resolved by understanding expert input as ‘expert review’, analogically to judicial review. The debate around judicial review shows that a procedure-independent standard need not subvert self-government and political equality. Similarly, many practices of expertise can be viewed as supplying some epistemic, procedure-independent standards democracies should heed. By analogy, scientific expertise does not subvert democracy – provided that the epistemic institutional advantage supplied by various expert inputs is kept in check by in-built democratic procedures maintaining the respect-worthy character of democracy. Therefore, if not their substantive contribution, what needs to be kept within reach of democratic oversight is the experts’ reliability and transparency. Consequently, the challenge ahead for democratic theory is to outline the place of experts within a system of public knowledge.

## Acknowledgements

I very gratefully acknowledge the aid and guidance offered to me by my supervisor János Kis.

Further substantive help and comments from Andres Moles, Zoltan Miklosi, and Nenad Dimitrijevic are also greatly appreciated.

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## 1. Introduction

A specter of truth is haunting democratic theory. The democratic ideal of politically equal citizens seems to be encroached upon by the necessary expert input into democratic politics. The experts who supply this input are themselves largely unaccountable; unelected they lack the legitimacy to shape substantively the political agenda, and yet without their input much of what goes on in politics today would not be possible. Their input is required for the policies to make sense – for them to be effective and in a reasonable sense track some standard of correctness and objective desirability.

We cannot escape the necessity of relying on experts in various fields. By virtue of living in complex societies with extending division of labor, it is unavoidable that specialization plays an increasingly large role in political decision-making. We need to take into account this growing complexity and rely on expert judgments for our policies – both for their design and implementation.

The recognition of a potential conflict between democratic rule and expert knowledge might at first seem to border on trivial; however it has profound implications for democratic theory. The ideal of democracy which would stipulate an essential value of citizen participation along with the logic of political equality runs afoul allegations of unequal fitness of individuals to make informed judgments and pronouncements on matters of community as well as the expectations that the process of democracy brings about some desirable results (Dahl 1989).

The overall tension seems to be about the place of truth in democracy – how an epistemic procedure independent standard, that is the truth – truth without the relativist scare-quotes or the culture-contextualizing cursive – and the people with the best access to finding it, that is the highly trained science specialists, or experts – come into conflict with our everyday expectations of democratic procedural fairness. What democratic theory requires is a theoretical reconciling of the terms of a fair relationship between political equals in a democracy and the requisite reliance on expert judgment in our policy input.

The problems communities face and for the solution of which they set up political procedures are partly of cognitive nature. In politics the knowledge of what is to be done plays an important role and the study of democracy requires an account of this epistemic dimension (Anderson 2006, Estlund 2008). It is of no avail for democracies to claim legitimacy through giving equal voice and concern to each member of the community if this fails to produce viable solutions for the problems they face. We require competence and expertise, however, we are also keenly aware that those who are, in virtue of their special knowledge, in the best position to uphold the interests of the governed, are at the same time also in a unique position to undermine democratic processes and abuse their position. Indeed, experts are not by themselves neutral, they can have selfish motives which need not be entirely congruent with the ideals of a liberal democratic order.

My overall intention in this thesis is to examine this tension between the elite impulses of expertise and the requirements of liberal democratic equality. I will argue that this central tension could be resolved – or at least alleviated – by drawing parallels between judicial review and some of our current practices of ‘expert review’. The resolution lies in viewing expertise as supplying some epistemic (fact-based), procedure-independent standard democracies should heed. As we know from theories of constitutional democracy, a procedure-independent standard need not subvert self-government and political equality – provided that certain conditions are met. In the case of experts it may require that the epistemic institutional advantage supplied by various expert inputs is kept in check by in-built democratic procedures maintaining the respect-worthy character of democracy. Therefore, if not their substantive contribution, what needs to be kept within reach of democratic control and oversight is the experts’ reliability and transparency. This will require to outline the place of experts within a system of public knowledge.

In a liberal democracy we ascribe the same basic moral status to everyone. We abstract from all the potential differences existing between persons and place them in a fair relationship of equals. At the same time, we may safely posit that epistemic equality is not only impossible but also undesirable as

an idea. It is our unequal intellectual capacity and unequal information that allows for human society to exist in the first place. However, we need to be appraised of this epistemic dimension when considering how it might affect our notions of political equality which, hopefully, is both desirable and possible.

### **1.1 Political Equality**

Political equality may look like a simple ideal. It rests on the recognition that each person is of equal moral worth, and so each has a claim to an equal status as a member of a political community and an equal say in matters of politics. It predicates, as Rawls put it, that “all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply” (Rawls 1971: 221).

In this work I do not wish to present an argument for the foundations of political equality (but cf. Christiano 2008). I would hazard an assertion that the presupposition of equal moral standing of persons in a political community is almost commonplace. But the interesting question is to outline what are the necessary implications of political equality for a democratic polity. For the simplicity of political equality is quite deceptive; its relation to democracy remain inexact and its measurement highly contentious (Beitz 1989; Dworkin 2000; Dahl 2006).

Political equality appears to be a *sine qua none* of a legitimate political order. Allen Buchanan (2002) argued that any account of political legitimacy has to answer the ‘the egalitarian challenge’: how can we as fundamentally morally equal beings be nevertheless under imposition of laws made, applied and enforced by a few? Obviously, this is true for any political regime, and even in a democracy some wield power over others and this political power asymmetry needs to be made compatible with the



default expectation of equality. Thus, argues Buchanan, “no conception of political legitimacy can be complete unless it provides a convincing answer to this question” (2002: 710).<sup>1</sup>

Dworkin in *Sovereign Virtue* (2000) distinguished between two conceptions of democracy: *dependent* and *detached*. What he calls a *dependent* conception of democracy is essentially outcome oriented – “democracy is essentially a set of devices for producing results of the right sort” (Dworkin 2000: 186), i.e. treating all members of the community with equal concern. The second approach, the *detached* conception of democracy, is rather concerned with political input – “democracy is essentially a matter of the equal distribution of power over political decisions” (ibid.). In this regard the fairness of democracy is tied to the features of the process alone; it is not concerned with the results, only with the question whether the procedures have upheld to an equal distribution of political power. So while the first approach recommends a consequentialist test for the institutions, the latter advises equalizing of political power (Dworkin 2000: 186).

The detached conception necessarily entails equality of power. If political equality is to be a separate dimension of equality, Dworkin argues, then power is the only intelligible metric for it. However, a problem arises – what exactly should equal political power mean? This metric proves to be very difficult to actually conceptualize and measure. Dworkin maintains that political equality has to be compared along both a horizontal and a vertical dimension. Horizontal equality of power could just as well be – none. But a genuine vertical equality where an average citizen would have just as much power over national issues as a government official is unrealistic. The detached conception is seemingly caught in a double bind from the start – either it ignores the vertical dimension and risks

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<sup>1</sup> Though it ultimately does not matter for the egalitarian challenge, claims of political legitimacy can have weaker and stronger forms: while the weaker only claims the institutions are justified in issuing laws and exercising compliance with these laws, a stronger claim would posit that individuals are also morally obligated to obey these institutions. Machin (2012: 102) believes Buchanan (2002) to offer a weaker account, while Christiano (2008) and Estlund (2008) imply the stronger one. In any case, any account of political legitimacy has to show how both the *process* and *substantive content* of law-making preserves the fundamental moral equality of all individuals (Machin 2012: 103).

overlooking an outright tyranny or it becomes untenable when trying to include it. (Dworkin 2000: 191)

Introducing two interpretations of equality of power - equality of impact and equality of influence – does not help much. Impact is the difference one has on his own in the political process. Influence is the difference one can make by inducing others to do as he wishes (Dworkin 2000: 191). Vertical equality of political power understood as equality of impact makes no sense outside of a stolid direct democracy. It is too demanding<sup>2</sup>. However, equality of influence is a questionable ideal. On the vertical dimension this would imply that officials are subordinated in their decisions to public opinion and always act as a majority of their constituents wished – this may also be institutionally impractical. But it is the horizontal dimension that poses a bigger problem here. Even in the most egalitarian societies some people might be more interested, more informed and more involved in convincing and influencing others. Attempting to enforce an equality of influence would necessitate a leveling down, a promotion of political disengagement that would run counter to the democratic ideal of an engaged citizenry (Dworkin 2000: 192-194).

The simple *procedural* view of political equality as *equal power over outcomes*, meaning that democratic institutions should provide citizens with equal procedural opportunities to influence political decisions, embodied in what Dworkin calls the detached conception, is also criticized by Beitz (1989). The simplicity is twofold: first it does not distinguish among different levels of abstractions at which the idea of political equality could arise – political equality here just is procedural equality. Secondly, political equality as institutional requirement of equal power is concerned only with the distribution of a single allegedly unambiguous value – power. Power is thus seen as the sole concern of political equality (Beitz 1989: 4-5).

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<sup>2</sup> On the contrary, an equality of impact horizontally considered is not demanding enough – my impact on politics is undiminished even when my political views are censored (Dworkin 2000: 193).

As Beitz points out, the concept of power allows for the possibility of several different meanings and as a result, comparisons of power and the very notion of an equal power can be interpreted in several, potentially contradictory ways (Beitz 1989: 7). For example, the system of representation may treat people both equally and unequally depending on our concern – e.g., the “quantitative” dimension of fair representation embodied in the principle “one person, one vote” can remain blind to problems of qualitatively unfair representation districting designs (Beitz 1989: 141-142). Similarly, exclusion of certain candidates, questions, or agendas does not reduce the weight of the votes, yet such a constraining of the political agenda will treat those who would prefer them unequally. Therefore, it is questionable if equal power is an adequate principle for political fairness (Beitz 1989: 12-14).

A theory of political equality should be able to explain what the terms of participation ought to be so that they can be said to reflect an equal public status of citizens in a democracy. According to Beitz, the role of political equality then should be understood as the “chief regulative principle of democratic political competition defining fair terms of participation”. The content of political equality admits of a variety of interpretations corresponding to these “fair terms”, the task of the theory then should be to identify the best interpretation of the content of this ideal (Beitz 1989: 17-18).

Beitz seems to believe a political community may be democratic without being egalitarian, i.e. that equality functions as an additional constraint “on the design of the mechanism that enables citizens to participate in public decisions” (Beitz 1989: 17). Each citizen can participate without actually being entitled to participate on equal terms. However, this seems somewhat problematic. If political equality is supposed to reflect the principle of equal concern for all along with an anti-paternalistic conviction that everyone is the best judge of his or her own interests, then an equal right to participate in the political process needs to be understood as constitutive of democracy, not just as some additional constraint (cf. Sadurski 2008: 44).

The issue of a fair distribution of power (i.e. political equality) in society is also a valuable ideal, irrespective of some substantive results this power distribution may bring about. As Wojciech Sadurski noted, the choice between a detached and a dependent conception is not a conceptual question of democracy, but a normative question of trade-offs between political and other spheres of equality (Sadurski 2008: 75-76). A purely dependent conception of democracy puts too much influence on substantive results at the potential expense of fairness and equal respect for each and every citizen. However, political equality and other types of equality may be viewed as incommensurable, because “political equality is about the distribution of second-order resources [...] which enable the adoption of decisions about the distribution of [all other] resources.” This need not entail an entrenchment of democratic procedures without any concern for social justice, but it shows that political equality as an ideal cannot be wholly subsumed under some all-encompassing ideal of social equality (Sadurski 2008: 77).

Dean Machin (2012) argues for a separation of concerns over political legitimacy from democracy. He defends a claim that democracy is not a requirement for the egalitarian challenge to be met. He wishes to avoid the debate about what exactly constitutes a democracy and concentrates instead on the conditions that make political institutions legitimate. Machin believes that the egalitarian challenge can be met by any political institution that satisfies the following four conditions: *horizontal equality* between citizens; an *acceptable form of vertical inequality* between citizens and lawmakers; the requirement of *publicity*; and an *institutionalized opportunity* for voice in the decision-making. The first two conditions regarding horizontal equality and an acceptable form of vertical inequality will be familiar to readers of Dworkin (2000). Together these four conditions can be also seen as conditions of democracy, but Machin remains agnostic about their exclusivity and the extent of their conceptual connectedness. For example, he views publicity as conceptually separate from democracy, yet believes publicity to be a necessary condition for a decision to be legitimate since “citizens are entitled to some account of why legislature passed law *f* rather than law *g*” (Machin 2012: 107).

I remain agnostic about Machin's general conclusion that democracy and political legitimacy need not be connected, I would merely repeat Buchanan's entreaty that "if the political system should express a fundamental commitment to equal consideration of persons, why shouldn't this commitment be reflected in the processes" (Buchanan 2002: 712), but I do find the four conditions elucidated above to be conceptually highly useful for my account. Regarding the central problem of this thesis, it is necessary to show whether the expert input into political decision-making rises to the egalitarian challenge. However, I am not interested here in the actual sociological conditions of persons ascending to their expert status – my account would quite boldly presuppose a fair equality of opportunity and educational justice that would allow people from all walks of life to become a member of the expert scientific community. This I believe would account for an *acceptable form of vertical inequality*: a division of cognitive labor being both desirable and justifiable in the eyes of those who did not rise to an expert status in the relevant field, they would not need to object as being morally slighted. I would leave the real-world investigations on how much of our educational practices comply with this ideal and what any defects might mean for the legitimacy of expert input for some other occasion.

What remains to be shown is when and how expertise in democracy fulfills the conditions of horizontal equality of all citizens, and, what is crucial for my account, how well it fares with regards to the conditions of *publicity* and *institutional opportunity for voice* of the citizens concerned by the decision-making. In the chapter on the concept of expertise I will show that publicity is practically an in-built feature of expertise – what makes expertise epistemically reliable is also what partly accounts for its legitimacy in the eyes of the concerned public. Finally, when it comes to the institutional opportunity for voice, I will rely on an analogy with judicial review, where decisions about laws are made by an unelected few and yet can be deemed legitimate, because it is responsive to potential input of the 'full blast of sundry opinions'. Similarly, what I will call the '*expert review*' can be seen as politically legitimate when it respects certain conditions of openness to challenges and questions from the lay public. Scientific advice on politics will be shown to be legitimate because it can meet all

four conditions without losing any of its truth-regarding properties. But before we can proceed with a proposed resolution, the nature of the challenge of expertise toward democratic equality of citizens also merits a short introduction.

## 1.2 The Challenge of Expertise

Expertise seems to be the order of the day. 'Leave it to the experts' or 'that is for the experts to decide' are all too common political refrains. Is expertise a threat to democratic politics? Contrary to some past pronouncements, when many authors predicted a rise of a new class – either managers, as Burnham (1962) would have it, or Gouldner's (1979) intellectuals who posited them as a specific new class 'on the road to power' – the inevitable advance of expertise in modern societies did not make liberal democracy outdated. More recent literature on experts from political sociology has dampened much of these worries. Brint (1994), for example, notes that the increasing influence of this professional stratum and their alleged cultural and ideological influence have been much overstated. Haskell's volume (1984) illustrates that just as the experts were becoming a topic of concern, it has been connected with a crisis of faith in their authority – deference to their authority was far from universal, across many fields (Haskell 1984). More recently Philip Tetlock (2006) has offered a trenchant critical analysis of the 'expert political judgment' and found it lacking.

However, the argument in favor of a more thorough involvement of experts and scientists in politics has been growing steadily along with their rise to prominence from the 19<sup>th</sup> century onwards. Social scientists, by virtue of their subject of interest seemed more prone to cross the line between research and social and political advocacy. The stage has been first set by Auguste Comte and Henri de Saint-Simon who, casting a long shadow over the next decades, called for men of science, *savants*, to be placed in the positions of authority. Their superior knowledge would allegedly ensure fewer errors in policies along with an overall moral oversight and guidance in the absence of theological foundations in the emerging modern social order (Gattone 2006: 1-15).

In their footsteps, Daniel Bell (1962) in his *The End of Ideology* famously heralded the advance of technocratic guidance, observing that science and technology may help overcome most social and political problems – they may in fact neutralize much of political debate. Ankersmit recently echoed this observation in the form of a lament – fearing expert knowledge may achieve a dislocation and a perversion of the political debate (Ankersmit 2002: 187). According to Ankersmit the appeal of expert knowledge lies in offering impartial solutions that would “transcend the narrow partiality of conflicting political parties” (2002: 189). He believes that conflict and political reality is essential for freedom, which arises from the interaction of those representing all sides of the social divides and therefore warns that the structuring of relations based on the discourse of the expert would “mean the end of politics and of freedom” (Ankersmit 2002: 192).

These are not new concerns. For example, Hayek (1952) has criticized the tendency of raising scientific thinking and methods of natural sciences to a level of ideology of social engineering (with Comte and Saint-Simone as his particular *bêtes noires*). Similarly, Crick [1962] has made a passionate defense of politics against, among other things, the doctrines of technology and scientism – i.e. the notions that all problems facing societies are of a technical nature and instead of political trifles, to resolve social tensions we need only look at the question of the proper application and administration of the available scientific knowledge (Crick 2005 [1962]: 70-86).

This distrust of technology and science was probably caused more by the changing conceptions of politics and not only by the rise of science and technology to prominence in our lives. The central belief of politics before was that technological action was *apolitical* and that technical solutions could be used to *depoliticize* an issue at hand, making the use of political power seem benign, uncontroversial or value-free. This was a cultural formula prevalent from the Enlightenment age, portraying mastery over nature as an uncontroversial, universal human goal<sup>3</sup>. Nature was an external

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<sup>3</sup> The formula was driven by the Enlightenment liberal faith in the possibility of an escape from politics, from the “elusive and fragile human judgments... to a less precarious trust in experts and their technical competences”. (Ezrahi 1995: 30)

constraint to be overcome by extra-political means of technology. So potent was this formula that it could “invest technological means with sufficient symbolic power to render the goals they seemed to serve as apolitical or incontestable” and became a powerful rhetorical source of political consensus (Ezrahi 1995: 29).

Defining human action in instrumental technical terms was meant to assuage fears that political actions espousing values will lead to immutable conflicts. The hope was that by referencing facts and just the facts, some of these conflicts might be resolved. Yet it ignored the fact that any technological or instrumental action itself “has a hidden ethical and political ‘software’” and that the reference to instrumental means “conceals the multiplicity of normative choices.” Furthermore, this technological action can itself “generate changes in the distribution of values and scarce material and political assets” (Ezrahi 1995: 31-32). The relation of science and politics extends both ways. It has been noted, that the extension of technological range of alterability of human life-conditions also extends what falls under the sphere of the political (Levy 1990). As science advances, new potential conflicts emerge, which require political action. Therefore, with this extension of the scope of politics in democracies, in the realm of public policy, there has also been a rise of the importance of social scientists entrusted with the design of regulatory public policies. In their position of expertise, some professionals can enjoy even the discretionary power of enactment of policies they prescribe (Turner 2003: 24) and in their care – be they social scientists, lawyers, medical practitioners, social workers – individual citizens risk being turned into cases, they stop being treated as entirely equal and become objects of knowledge (Brass 2000: 308-309).

There are no uncontroversial, clearly agreed-upon public goals and interests whose implementation democratic governments are elected to achieve. The public interest is composed of incommensurable and incompatible beliefs and values of a diverse and heterogonous public. Thus the ‘technological pessimism’ and distrust of experts evinced in the latter half of the 20<sup>th</sup> century, argues Ezrahi, can be at least partly attributed to this realization of the impossibility of the



operationalization of the concept of 'public interest' rather than any decrease in trust in technology as such, brought about by any of its unanticipated side-effects. The politicization of technology is not based on an inherent property of technology per se, but rather the social contexts in which it is to be used and the norms and values underpinning the actions in the public realm (Ezrahi 1995: 33):

*If the European Enlightenment produced the hope that because arbitrariness is an irrational use of freedom its opposite is the rational use of freedom, which is compatible with order and manifest in technology, in late twentieth-century Western society we have come to recognize freedom as something manifest not so much in rational systemic action as in benign disorder, not in planned systems, which seem to defy capricious and disorderly actions, but in eclectic actions and fuzzy, shifty compromises, which reveal the absence of a controlling agent. (Ezrahi 1995: 33)*

The recognition of irreducible value conflicts inherent to democratic politics has also felled the notion of the 'solution' approach to politics, which presupposed that "social problems can be defined clearly and compellingly, and that technical experts and scientific professionals can advise policy makers" on the optimal means to solve them (Ezrahi 1995: 34). Not only the solutions but even the definitions of the problem are subject to value struggles and competing frames. In the context of this political pluralism it has become increasingly clear that the "solution approach to social problems is anachronistic, ineffective, and illegitimate" (Ezrahi 1995: 34). The question then becomes, not about subsisting the political by the technocratic, but rather how to make political decisions better from the scientific and technocratic standpoint.

From the preceding it should be clear that the experts are not likely to take over any time soon and their making politics as such obsolete is equally unlikely, but they can nevertheless present a challenge to democratic politics. I believe the challenge that experts pose can best be characterized in three broadly conceived categories. The first would be the institutional aspect of expert influence, the challenge of *technocracy*, which can be understood in broadly Weberian terms as a problem of

delegation. The problem of expert influence on policies can thus be seen as a special case of the general principal-agent problem, and so we could consider expertise as akin to bureaucratic authority. Secondly, there is the challenge of scientific expertise as an *ideology*. The idea is that experts – vis-à-vis their scientific expertise – could end up unduly shaping political discourse and agendas. Since science is not simply just a neutral tool for implementing policies determined prior to its investigation and intervention, scientists can offer an instrumentalized account of their know-how tailored to specific political issues<sup>4</sup>. Finally, expertise touches upon the normative aspect of democratic authority. The general competence of citizens to make prudent and informed political choices has been a subject of doubt since Plato. At the same time, highlighting the competence of the few – the experts – could lead to the conclusion that the knowledgeable should decide, that knowing alone does make one the boss. This is the challenge of *epistocracy*. Before proceeding with the rest of my thesis I would like to briefly expound on all three.

Firstly, there is the challenge of *technocracy*. At least since Max Weber it has been remarked that there is a tension between bureaucratic organizations and democratic ambitions – it might be exceedingly difficult and counterproductive to try to extend democratic control over those who perform managing functions. The difficulty in essence is there because “democratic control implies the subjection of the expert to the ignorant” (Lively 1975: 5).

The problem of expertise in a democracy may also be framed as an imbalance in knowledge which threatens the rough equality presumed by democratic accountability. We may be faced with a dilemma here: we either admit that public is ignorant about certain matters and capitulate to a rule of experts, or we submit to a strictly democratic populist rule operating under ignorance, guided by a

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<sup>4</sup> Some accounts would show how experts and knowledge can structure and perpetuate power relations. In broadly *Foucauldian* terms, knowledge is understood as productive of power; it produces reality, delineates the domains and rituals of truth. Of course, this could end up in incoherence. If it is true that truth is necessarily ideological and serves to preserve or assert a power relation, then what power relation does this particular truth try to support? However, there is still a good case to be made for experts’ superior knowledge giving them an edge when it comes to framing of the issues and shaping of the political agenda.

folksy common sense, rumor, or even fear (Turner 2001, Turner 2003). Understood this way, expert authority may seem a case akin to bureaucratic authority. The question of ultimate authority may not stand as either/or: either expertise is a criterion and the experts dictate and politicians follow, or democracy is a criterion and experts are no more authoritative than anyone else (Mohr 1994). Just as Weber observed about bureaucratic systems, that policies are determined to a large degree by administrative officials and that we should ask what scope there is for political leadership within a bureaucratic system (Page 1992: 5), so perhaps experts are necessary for the system and we need to investigate what is the scope for democratic political leadership.

Questions of expertise should not be framed too abstractly; we need to consider the institutional nexus that gives expertise its meaning. Expertise is not some detached and disinterested, free-floating resource used by politicians, and the technical credibility is not its sole source of legitimacy (Bimber 1996: 5). Some institutional settings may elicit greater or smaller degrees of politicization of expertise, notwithstanding the particular interests and choices of decision-makers and opinions of experts.

However, when it comes to complex policy issues, ordinary citizens have only limited overview of the policy alternatives and ability to judge the best solutions. The citizenry is essentially facing a principal-agent problem which Lupia and McCubbins called the 'democratic dilemma' (1998). People elect officers to represent them and act on their behalf. Citizens – the principal in the story – elect legislators (the agent). These may or may not accurately represent the interests of the voters, the voters, however, lack the requisite information on the complexity of the policies being decided and how their own interests are being represented (Esterling 2004: 25). To further complicate the picture and prolong the chain of delegation, the elected officers themselves often represent their voters only too well and lack the appropriate skills and information to effectively judge the issues. They delegate their authority further to experts in various guises; commissions, panels, advisors, policy lobbyists, researchers, and academics.

Just like in most cases of delegating, where delegation allows principals to reach desired ends with reduced costs and efforts (Lupia 2003), politicians use experts in order to deal with uncertainty. Depending on the type of uncertainty they may or may not choose to delegate – when facing uncertainty about the cause and effect of particular policy instruments, the politicians may be more willing to leave the details to experts (Lindvall 2009: 708). For this reason Lindvall (2009) offers guarded optimism. He posits that the influence of experts in domestic policies is limited by the fact that these policies are usually ‘nested’ with other policies and that they are debated in the public realm. Instruments and methods, unlike goals and objectives, seem more arcane and technical and can be more easily relegated to be purely within the purview of the technocratic expertise (Lindvall 2009, cf. Alesina and Tabellini 2008).

However, it is important not to be deceived by the simplifications of viewing experts as mere conveyors of relevant policy information. A simple model of policy formation would view expertise as possession of a single piece of information – it implies that expertise is *perfectly invertible*, since a single recommendation given by an expert would make any lay person just as informed. This goes against most experiences of expertise in the principal-agent policy processes. If parliaments were capable to simply learn from expert agencies, nothing would prevent them from subverting this expertise to their own ends and eliminate the rationale for delegation in the first place. The reason why principals commit and delegate some authority is standardly resolved by introducing institutional barriers, or ‘frictions’, into the equation. However, as Callander (2008) shows, even under frictionless conditions, it is the complexity of information the experts possess that allows for delegation of authority: “If an agency’s expertise is sufficiently difficult to invert, the agency can protect its informational advantage over a non-expert [legislature] and favorably influence policy outcomes” (Callander 2008: 125). Agencies are further incentivized to invest in expertise, because this increases their power vis-à-vis their principal, the *de iure* legislative authority. As a result, as Max Weber would put it, the ‘political master’ finds himself in the position of the dilettante facing the expert.

Secondly, we are presented with the challenge of scientific expertise as an *ideology*. The Foucauldian notion of power/knowledge conveys the idea that knowledge itself is never neutral. Science, as a discursive practice, according to Foucault, simultaneously structures, systematizes, formalizes, modifies, articulates, confirms, and validates our knowledge. There is an interplay of relations at work, wherein science and ideology come to influence each other (Foucault 1972: 185). In this sense knowledge is a productive power; it produces reality, produces domains of objects and rituals of truth (Merquior 1985: 109; cf. Bourdieu 1991). When Foucault says that ‘power produces knowledge’ we probably should not read it in an overly relativistic way. Rather it would be more palatable to read it as saying that “social institutional arrangements are required for the discovery of truths in allowing appropriate evidence to be transmitted and in enabling the emergence of new styles of reasoning” to decide what is true and what false (Wong 2003: 119). This does not mean that no objective knowledge is possible as such<sup>5</sup>, only that no knowledge is neutral and that knowledge is intimately connected to social relations (cf. Prado 2003).

The usual reading is more concerned with how the powerful can use and abuse knowledge for their aims. However, I believe the issue should also be approached from the opposite end. Can those who are knowledgeable unduly influence and construct power relations to their own advantage? According to some readings, there is no way in fact to separate knowledge or truth from power, since no power mechanism can operate without being validated by a system of knowledge (Brass 2000: 306). If understood like this, the problem may be as to how we reconcile the fact that experts are the people who are the ultimate source of knowledge and understanding leaving the lay public potentially under its intellectual control (Turner 2001: 125).

In less stark terms, the issue might be put forward as a problem of science in politics and scientific advice on policy. As Maasen and Weingart note, in the latter half of the 20<sup>th</sup> century, science has

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<sup>5</sup> Prado (2003) compares Searle’s and Foucault’s views of truth and concludes that there is much common ground and that, somewhat surprisingly, Foucault is closer to *realists* than many of his critics from the analytical tradition of philosophy realize.

slowly lost its claim to be an objective, reliable and neutral tool. There have been concurrent developments – a politicization of science, as scientists have been drawn into political struggles, offering an instrumentalization of their expert know-how, taking different sides and often offering contradictory positions and interpretations and a push toward a more explicit democratization of science (Maasen and Weingart 2005: 1-2). How do we deal with the relationship of science and democracy and what should be the proper input of science in politics? How do we reconcile the ideal of scientific neutrality vs. potentiality of a bias<sup>6</sup>?

One example of scientific influence on democratic policy-making is climate science. A global community of scientists, most of them associated with the Intergovernmental Panel on Climate Change, has for a long time now warned of the effects of continued anthropogenic emissions of greenhouse gases on the planet's climate. Scientists specializing in this issue have come nearly close to a consensus, and the debate that rages on is mostly an attempt to convince a skeptical public and various non-specialized detractors (Kitcher 2010), as well as to wrangle the question of proper framing of the issues (Malnes 2008). But surprisingly, it is also exactly this aspect of 'settled science' that has led some to question the implied barring of substantial disagreement as well as the illegitimate restricting of the available potential policy responses (Aitken 2012, Swyngedouw 2010).

When sociologists Berger and Luckmann (1991 [1966]) brought attention to the sociology of knowledge and examined what passes for knowledge in society, i.e. how it is developed, maintained and transmitted, it also necessitated the question of experts – who are the bearers of knowledge and how do we evaluate their claims. Specialization of knowledge allows for the emergence of experts within a particular field, with a potential for the emergence of the "universal experts" who hold "an

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<sup>6</sup> The notion that, when politics enters the picture other than truth-regarding interests also appear, is almost commonplace. It was Hobbes, who observed that "if it had been a thing contrary to any mans right of dominion, or to the interest of men that have dominion *That the three Angles of a Triangle should be equal to two Angles of a Square*; that doctrine should have been, if not disputed, yet by the burning of all books of Geometry, suppressed, as farre as he whom it concerned was able." (Hobbes 1988 [1651], 166)

effective monopoly over all ultimate definitions of reality in society". Typical for archaic societies, such a monopolistic knowledge tradition and its expert administrators are usually upheld by a "unified power structure" (Berger and Luckmann 1991: 138-9).

In modern pluralistic societies such monopolistic knowledge pretensions might seem harder to maintain (Berger and Luckmann 1991: 142-143). However, there does exist the potential for state power to effectively deputize and accredit experts in certain areas as official definers of "reality". For example, Koppl (2010) has used the framework offered by Berger and Luckmann to focus on a specific type of experts – forensic scientists, who enjoy a monopoly in their specialized field under the protection and prestige of law enforcement. He also located much of inefficiency, errors, and potential for malfeasance in the institutional structure under which the forensic experts operate and suggested instead a "competitive self-regulating mechanism" mimicking the mechanism of the scientific process as a necessary corrective (Koppl 2005, Koppl and Whitman 2010).

Of course, not every instance of expertise and science in the narrow sense can be considered as posing a 'threat'. As Turner observes, there are "rarely problems in simply agreeing to delegate to the relevant [scientific] community [...] the problem of determining what the participants in public discourse should treat as fact" (Turner 2003: 71). The problem may arise when expertise is concerned with "influencing public opinion in order to produce political results." Scientists or organizations with aims to influence the public opinion<sup>7</sup> are susceptible to conflicts of interest; organizations which are employed by public bureaucracies to serve their informational needs are no longer uncontroversially 'neutral' (Turner 2003: 70-71). The question here is how a public scrutiny and more importantly a public debate may proceed in the situation when citizens as co-discussants are not able to fully understand their expert interlocutors.

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<sup>7</sup> Bucchi (2009) proclaimed skepticism about the 'technocratic thesis' of the experts' ability to steer the public opinion in any meaningful way, claiming that the appearance of anything approaching it has been a result of expectations and willingness to delegate on part of the citizenry and part result of the scientific community's true capacity to be the first to recognize issues that will soon become the public agenda (Bucchi 2009: 17).

This aspect is made even more acute by emphasizing the deliberative aspect of democracy – namely, who would set the agenda. In order for democracies to be able to deliberate more, they will paradoxically require more expert input and depoliticization of public decision-making (Pettit 2004). The result is what Peter Weingart (1999) called a paradox of science in politics, i.e. the fact that the politicization and oversupply of expert knowledge dangerously delegitimizes politics and at the same time de-authorizes science. There are, furthermore, competing intuitions about the beneficence of scientific autonomy on the one hand and the requirement of public oversight on the other (Resnik 2008). The values of public engagement and oversight have to leave some room for the autonomy of scientists if these are to continue to pursue their socially beneficial roles of unhindered truth-seeking.

At the same time, an implied, sharp disconnect between science and politics may not be possible, as scientist will continue to produce research that has increasing relevance for our social lives and the provision of scientifically true answers may require real value commitments, decisions and judgments. If scientists are to be someone else than paternalist technocrats, we may need to rethink the political framework of political engagement, where experts and laymen practice mutual consultations (Brown 2009: 257-260). The increasing importance of science in policy-making will also require the abandonment of ‘the value-free ideal’ in scientific research and an embracement of a more public role for science (Douglas 2009).

This moves us to the third and final challenge – the challenge of *epistocracy*. Both technocracy and science as ideology raise institutional questions, but the greatest challenge experts pose to democracy lies at the level of normative theorizing. When the doubtful competences of citizens are contrasted with hard-nosed mastery of the experts, the tension between democratic desires and expert realities could draw one to abandon the commitments of political equality.

If democracy is to work, noted Robert Dahl (1992), a degree of competence is to be expected of its citizens. The classical view of citizen competence expects the citizen to be highly involved in public affairs, participating in political activities, well-informed and engaged in debates about political



issues. Obviously, with such a high standard, most citizens would fail to attain this ideal, so a narrower view insists that each citizen is involved to an extent that her self-interest dictates (Dahl 1992: 46). Still, Dahl is skeptical about as to what extent the ideal of competence can be achieved and argues we should articulate a standard of an *adequate* or *good-enough* citizen – a citizen who through mandatory formal education gains sufficient political literacy to ensure they will be able to express their self-interest in the political arena.

But even this solution is fraught with challenges. Dahl (1992: 49-51) lists the following three major problems for the citizens' competence in making good political decisions. Firstly, political decisions are now made at a scale that increasingly dwarfs the citizens' imaginations and abilities to hold politicians accountable. Globalization has brought larger polities and intergovernmental bodies which increase the feeling of remoteness. Secondly, the formal education is increasingly insufficient for the citizens to be able to deal with the growing complexity of issues debated and decided in the political process. The internal complexity of each domain of public policy – from defense to agriculture, from immigration to healthcare – along with their interplay accounts for a cognitive overload beyond the limits of an average high school curriculum, which in turn leaves politics open to populist shortcuts and demagogic simplifications. Finally, the developments in communicative technology have decreased the costs of spreading political message, including the simplistic and misleading. The increased volume and scope of the communications makes it increasingly difficult for even the most diffident and prudent citizen to recognize the noise from the signal.

It should be noted that despite decades of theorizing, the concept of citizen competence remains highly nebulous. Competence has resisted a technically precise definition and more often than not it simply stands for dubious proselytizing. Unlike being a competent driver or a baker, what being a competent citizen entails is far from clear; it could require anything from individual knowledge, intelligence, and literacy, through participatory ardour, sociability, altruism, or empathy. In short, the proffered qualities required of democratic citizens are “notable for their amorphous idealism and

conformity to passing trends” (Weissberg 2001: 280). Even Dahl in the end resorted to suggesting blandly an increase of citizens’ ‘empathetic understanding’ to deal with increasing scale and diversity of politics (1992: 56).

Furthermore, the obvious risk with standards of competence is that we might elevate those who possess them as more suitable to rule than those chosen via the democratic process. Be they Plato’s guardians, the revolutionary vanguard of the proletariat, a coterie of highly trained Mandarins, or a scientific technocracy, it is well understood by democratic theorists – probably most famously by Dahl himself (1989) – that the idea of the rule of an elite is deeply flawed, both morally and empirically.

But a new generation of theorists presses the issue on. They maintain that voters are mostly irrational (Caplan 2007), ignorant (Somin 1998, 2013), and as such they should refrain from participating in politics (Brennan 2011, 2012). Something or other is not right with the people and if we value something else apart from the democratic process itself – which with the proceedings being populated by an incompetent lot is bound to fail somewhere along the line – then mightn’t we want to rethink this political equality before it is too late?

Epistemic democrats tend to agree that procedures in and off themselves are not enough. The value of democracy has to lie not only in equal respect it pays to each Tom, Dick and Harriet, but also that it supplies them with objectively beneficial results. However, the epistemic democrats would strenuously object to the epistocratic line of thinking that would try to push political equality to the sideline and elevate the rule of the knowledgeable or educated as more desirable. As we will see, Estlund (2008) spends a great part of his book fighting (quite successfully) this epistocratic thesis (as he termed it), while other epistemic democrats have also been quick to reply to the challenges<sup>8</sup>.

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<sup>8</sup> For example, one early and particularly combative reply comes from Elster and Landemore (2008), in which they call Caplan’s arguments “ideological” and “conclusion-driven”. See also Landemore & Elster (2012), a

However, I believe the epistemic democrats' account has lacked an answer as to how exactly the necessary reliance on expert knowledge does not threaten to slide towards an epistocracy, how exactly they can maintain the standard-of-correctness driven democratic desire with the respect for political equality (cf. Gunn 2014 for a similar concern). In the work that follows I hope to supply this account.

The structure of the dissertation is as follows. This introductory chapter is followed by a chapter which tackles the philosophically formidable issue of defining what exactly is meant by expertise. The chapter commences with an overview of the social epistemology of expertise, where I side with the view that experts need not be seen merely as people in possession of true answers, walking encyclopedias with immediate recall, but as people deeply immersed in their particular specialist habits, practices, and culture, which allows them to develop answers to new questions as they arise in their field. Their possession of epistemic authority is tentative, context dependent, it resides in their ability to not only reliably 'track the truth' in their testimonies, but also in the publicity of their standards of inquiry and their communication practices. The question of defining experts is intimately connected with the question of the possibility of their recognition by the lay public. The culture of responsibility inherent in scientific practices along with the institutionalization of certain features of 'epistemic vigilance' both suggest that, on the whole, experts can successfully signal their reliability and trustworthiness to the public.

The third chapter concerns the notion of experts as political representatives. As we have seen, part of the challenge of expertise has been presented as a question of the proper institutional context. Current literature on political representation – while making broad claims about the applicability of the concept to everything political – has also attempted to defuse the challenge of expertise by positing experts as representatives of certain interests of the citizenry. Scientific experts are thus

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collection of essays where Caplan replies to his critics. See also Gaus (2008) and Bennett & Friedman (2008) for further comprehensive critiques of Caplan's main argument about voter and economic ignorance.

presented as political representatives in lieu of their expertise. This chapter rejects the view. In order to counter the central proposal that the problem of expert influence in democratic politics can be simply side-stepped by expanding the concept of representation, the chapter revisits Hanna Pitkin's contribution and tracks the development of the so-called 'representative turn' in democratic theory. Drawing on Pitkin's contribution, I emphasize the importance of formal authorization criteria in representation and demonstrate that scientific expertise actually presents a good case of why delimiting the concept of representation in this way makes perfect sense.

The fourth chapter then prepares the ground for the main argument in the subsequent two chapters by defending epistemic democrats' notion of 'truth' as a standard of correctness independent from democratic procedures. In this chapter I demonstrate that the idea of objectively true facts does not present a despotic subversion of democratic politics, nor does our embrace of it commit us to a slide towards epistocracy. Even without subscribing fully to scientific realism, the notion that the true state of the world can be known, at least approximately, and that this knowledge can be posited outside of the procedures of democratic politics is not so far-fetched as to warrant a dismissal purely from fear of an imminent authoritarian cognitivism.

In order to combat the objection from authoritarian cognitivism, to which epistemic democratic account remains vulnerable, the fifth chapter introduces the analogy between judicial review and 'expert review'. In this chapter I compare the writings by Ronald Dworkin and Jeremy Waldron, and offer a defense of judicial review that draws on their strengths and circumvents the shortcomings of their accounts. In this I am greatly aided by Frank Michelman's exposition of respect-worthy democracy which clarifies that a procedure-independent standard of correctness need not subvert the possibility of self-government, provided that those responsible for discovering and elucidating it still pay procedural respect to citizens in the process.

The sixth chapter then simply extends the foregoing argument to the practice of expertise, best described as 'expert review'. The contribution of scientific expertise to politics is in offering an

independent standard of correctness, true facts of the world as it exists, which democracies do best to heed. The chapter makes clear how this process can be made respect-worthy for the citizens by proposing a few broad requirements for the institutionalization of scientific inquiry in democracies.

## 2. Expertise

'I have a degree from Harvard. Whenever I'm wrong,  
the world makes a little less sense.' -- *Frasier*<sup>9</sup>

The question who is an expert may seem a simple one. But in both its immediate denotations, the definitional and the socio-inquisitive, it poses a serious philosophical challenge. As will be made clear in this chapter, part of the puzzle of the place of expertise in a modern democratic society can be interrogated simply by trying to define the phenomenon. To be apprised of the challenge of expertise for democracy, we need to turn to the questions of who are the experts, what they can say to know and how do we know what they say is worth listening to.

### 2.1 Social Epistemology of Expertise

The term expert can be traced to Latin *expertus*, the past participle of verb *experiri*: to try, to experience (Partridge 2006: 1025). The dictionary definition suggests a specialist in a specific field, with particular skills or knowledge. An expert is expected to be an epistemic authority. The term authority may in turn also seem fraught with difficulty. For Hannah Arendt, authority was a power relying neither on force nor on argument: authority is lost if it has to use force, and at the same time, it implies hierarchy and obedience. Persuasion and argument, on the other hand, imply a relation of equals (Arendt 1961: 92-93). However, Arendt believed authority to be no longer a sustainable topic of debate since the basis for authority “has vanished from the modern world” (Arendt 1961: 91). This source of authority was “always a force external and superior to its own power; ... [this] external force which transcends the political realm” was “made either not by man at all, as in the case of the law of nature or God's Commandments or the Platonic ideas, or at least not by those actually in power” (Arendt 1961: 97).

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<sup>9</sup> *Frasier* TV series, Season 2, Episode 12; 1995.

Authority for Arendt rested on something outside of human reason and experience; it brooked no disagreement, it invited no rejoinders, it was simply to be obeyed – and since it was engendered by teleological doctrines, their waning with the advent of modernity has meant the weakening of authority as well (along with its pendants, tradition and religion). Yet we continue to employ the term even without any implications of a teleological hangover clouding our vocabulary. ‘More than advice, less than command’, is a popular but an ambiguous description of authority but captures the essence of a modern understanding, free of any teleological trappings. An authority is someone who is in a relation of superiority to another in a particular area (Bayles 1987: 288). An expert is an epistemic authority, someone who is superior in a field of knowledge – she knows more about X than others.

But in order to answer the question who is an expert we need to go further than to reach for a dictionary, we also have to look at the social practices of obtaining and sharing knowledge. Reliable information seeking is an important part of human activity. An important part of this information seeking is conducted in a social environment for which the Cartesian ideal of an independent inquirer individually ascertaining all propositions on her own no longer suffices. Our modern and “deeply collaborative and interactive nature of knowledge seeking” makes it necessary for the individual epistemology to be supplemented with a social counterpart: ‘a social epistemology’ (Goldman 1999: 4).

Alvin Goldman emphasizes how paths to knowledge can lead through interactions with other agents, how knowledge spreads within groups of agents, and even how collective and corporate entities such as juries and legislatures can be counted as knowing agents. His proposed ‘veritistic’ social epistemology studies how social institutions and practices promote knowledge, meaning “true belief”. His basic reasoning is that social practices can have both positive and negative impact on the level of knowledge. The normative and evaluative prescription of his approach is that truth, or

knowledge, is the one value which should be maximized, and institutions are evaluated based on their capability to foster true beliefs, or decrease falsehood and ignorance (Goldman 1999: 5).

Of course, he does not deny that other values have their relevant say when it comes to the appraisal of social institutions. He makes it explicitly clear that he considers veritistic social epistemology as a specialized field of inquiry that can tell us a lot about how institutions and practices impact knowledge, but this impact does not trump other potential values in other spheres. For example, in trial proceedings some information may be barred from the court because of values accorded to due process, even though that information might increase the knowledge during the trial (Goldman 1999: 6).

Goldman's *veritism* is similar in structure to utilitarianism in that it evaluates states of affairs based on how they promote or hinder one single value. In veritism 'knowledge' occupies the same role as utility or happiness does in utilitarianism – it is the only intrinsic, fundamental epistemic value. Consequently, practices or actions, rules and institutions, have only an *instrumental* veritistic value "insofar as they promote or impede the acquisition of fundamental veritistic value" (Goldman 1999: 87). This similarity in structure also opens the account to criticism similar to the one raised against utilitarianism<sup>10</sup>.

The major objection to be raised is the insistence that there is more than one intrinsic value to be promoted by normative epistemology. For one, true belief, ignorance and error seem to be slightly different things, and attempts to translate them into a single measurable magnitude run into difficulty, especially when we try to figure out where on this scale should ignorance and error be put, respectively (Coady 2012: 7). What is less epistemically valuable, error or ignorance? They are clearly not the same and probably should not be both accorded with a value of zero – but then which is

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<sup>10</sup> Coady (2012: 20-22), by analogy to Rawls (1971), attempts to build an 'epistemic difference principle', to show how a purely veritistic account does not take the distinctness of knowing agents seriously, promoting practices that can leave some agents utterly ignorant.



worth more? Further complications can stem from the value of *relevance*, or how interesting the knowledge in question is<sup>11</sup>. Goldman acknowledges that not all truths are created equal in that they are not all equally worth knowing or promoting and that this is a complication (1999: 94-96). Elsewhere (Goldman 2002) he tries to sidestep the issue by redefining the high epistemic value as “truth-possession *on topics of interest*” (Goldman 2002: 61). Coady notes (2012: 19), Goldman could also attempt to portray the relevance of knowledge as another fact to be known about the world (i.e. a sort of meta-knowledge), though this would introduce subjective evaluations into the mix, since true beliefs may be seen as differently relevant from person to person. Furthermore, interest itself is also a matter of degree – and how do we reconcile between practices that promote many only slightly interesting truths as opposed to a few very interesting ones? In any case, these complications seem to dampen some of the appeal of veritism, which professed to help us treat “normative epistemology as a simple matter of promoting one quantifiable value” (Coady 2012: 19).

However, when it comes to defining expertise, veritism seems less controversial. Experts are simply people who do possess a lot of correct information, know a lot about their field and have the “ability to generate new knowledge in answer to questions”<sup>12</sup> (Goldman 2001: 91). It is to them we turn when we want to find correct answers to our questions. We could distinguish between skill expertise (master violinists, trapeze artist) and intellectual expertise, but it is the latter which, for Goldman, is epistemologically more interesting. Similarly, Joseph Raz defined expert (or theoretical) authority

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<sup>11</sup> Another complication that occurs to me is the question about the value of knowledge’s *provenance*. If true beliefs were the sole epistemic value worth promoting via a system of epistemic practices, then in this system there could be no principled objection against plagiarism. Plagiarism, when done properly, promotes true belief, but we find it objectionable and any normative epistemology worth its salt probably needs to treat it as such.

<sup>12</sup> This distinguishes them from *reputational* experts, who are believed by others to be objective experts. It is possible to be a real expert without having the reputation for it – for example nobody has to know or even care about my extensive knowledge of Monty Python, but that does not make me any less of an expert on the matter. On the other hand, even though most real, bona fide experts are also reputational experts, not all reputational experts are real experts. As we shall see, the question how to correctly ascribe the reputation to a real expert is an important problem.

simply as someone who is “good at stating how things are”. One can be an authority on medieval coins or quantum mechanics and as such he can “vouch for the reliability of particular information.” His judgment is found to be “a particularly reliable guide as to how things are, independently of that judgment” (Raz 1990: 2).

In his earlier writing, Goldman offered this definition: an expert is someone who “either (1) has true answers to core questions in the domain (i.e., believes or assigns high probability to these answers), or (2) has the capacity (usually through the possession of learned methods) to acquire true answers to core questions when they arise. Degree of expertise, then, is primarily a function of the candidate's question-answering power, i.e., how often he can form a belief in a correct answer as opposed to having either no opinion or an incorrect opinion” (Goldman 1991: 129). The first definition of an expert, however, implies that with the possession of that piece of information a layman can also become an expert, that expertise is in fact fully transferable. However, this is not always the case, and we will see that expertise gives its possessor a positional and social advantage over the layman.

It might be fruitful then to emphasize that experts, as opposed to novices or laymen, not only have more knowledge but have a situational ability to gloss and acquire new knowledge rather quickly. What truly differentiates them then is not what and how they know or how they use this extra knowledge in decision-making, but their ‘capacity for learning’. Their epistemic standpoint gives them the extra ability to learn and develop new concepts and new understandings in their domains (Luntley 2009). Collins and Evans (2007) similarly emphasize the wisdom or competence-based knowledge of expertise, the tacit knowledge gained through ‘enculturation’ and interactive immersion in specialist practices rather than from books or extensive information gathering. (Collins & Evans 2007: 23-24) Goldman seems to have realized this and he does make an important concession later saying that “there are elements of skill or know-how in intellectual matters too, so the boundary between skill expertise and cognitive expertise is not a sharp one” (Goldman 2001: 91).

But Coady (2012: 28:30) chastises Goldman for unnecessarily complicating the concept of expertise. Goldman insists that experts possess not only a comparatively superior amount of knowledge, but must have attained a certain threshold of a “substantial body of truths in the target domain” (Goldman 2001: 91) to be counted as a real expert. On a purely conceptual level, this seems like rather a vague component, which seems to have been inspired more by our current practices of bestowing credentials on an expert after passing an arbitrary set threshold.

However, Coady misses the mark in his criticism of Goldman’s claims about the dispositional element of expertise. Goldman states that possessing information is not the sole distinguishing feature of expertise, but that it also “includes a capacity or disposition to deploy or exploit this fund of information to form beliefs in true answers to new questions that may be posed in the domain” (Goldman 2001: 91). This is what makes experts potentially so unique, that in the course of gaining the relevant expertise they also gain the skill set and disposition to solve and answer new questions arising in their field. This disposition “arises from some set of skills or techniques that constitute part of what it is to be an expert” and as such is not purely cognitive. Coady believes this disposition to be merely a symptom and not a definitional feature of expertise. He proposes us to imagine Jones, who due to some impairment is incapable of learning and answering new questions, but still possesses a swath of relevant information learned before his accident. He should still be considered an expert until such a time that his knowledge becomes outdated or common (Coady 2012: 29-30). This seems wrong. In an important sense, Jones does cease to be an expert. The insistence that the expert is simply only someone who has information deprives the concept of its important social aspects. By saying simply Jones is an expert because he knows that proposition  $p$  is correct will in equal terms make Smith an expert as soon as he learns  $p$  from Jones. By extension, simply having all true propositions freely and readily available in some world wide databank could make anyone capable of reading, writing or clicking a mouse an expert. This seems intuitively wrong. What Coady essentially proposes is defining experts as walking encyclopedias, but that is a very limited view. Reading the

encyclopedia article on lasers, complete with the latest findings, will not make me an expert on lasers.

Sociologists Harry Collins and Robert Evans (2007) offer a highly nuanced and perceptive analysis of expertise. Expertise exists on a continuum, and the most substantive expertise involves a genuine understanding and tacit knowledge, which cannot be gained without deep social immersion in the social groups who possess and produce the expert knowledge. Their ‘periodic table of expertise’ (Collins & Evans 2007: 14) follows the growth of specialized knowledge from popular ‘back of the napkin’ understanding, one that can become ubiquitous with proper general education, through knowledge gained by reading primary sources, toward specialist tacit knowledge, where they further distinguish between *interactional* and *contributory* expertise. Knowledge is seen as wisdom-based or competence-based – it is not about what you can learn or recite, but what you can do.

Part of the specialist training then is located in learning the ropes, being habituated into the specialist practices. To become an expert means interactive immersion with the specialist field, not only mastering all the primary source knowledge accumulated by experts in the past<sup>13</sup>, but undergoing a process of ‘enculturation’, after which the expert learns to ‘talk shop’ with other experts – gaining *interactional* expertise<sup>14</sup> – and then potentially learns how to *contribute* new knowledge in their domain (Collins and Evans 2007: 23-24). On this view expertise is a substantive

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<sup>13</sup> A huge part of becoming an expert, probably familiar to anyone with their PhD, is learning what literature to ignore. As Collins and Evans note “it can be shown that what is found in the literature, if read by someone with no contact with the core-groups of scientists who actually carry out the research in disputed areas, can give a false impression of the content of the science as well as the level of certainty. Many of the papers in the professional literature are never read, so if one wants to gain something even approximating to a rough version of agreed scientific knowledge from published sources one has first to know what to read and what not to read; this requires social contact with the expert community. Reading the professional literature is a long way from understanding a scientific dispute.” (2007: 22)

<sup>14</sup> Interactional expertise is more important than it might sound – for example, it is the basis of ‘peer review’, since none of the reviewers can always be expected to be doing exactly the same highly specialized research, but most specialist are conversant enough to know whether a specific research contribution can pass the muster (Collins 2014: 72).

quality that any person can possess, if they undergo the requisite training and enculturation in the specialist field. While that might sound democratic, it in no way implies that anyone possesses some default expertise, that there is such a thing as ‘folk wisdom’ with contributions counted as equally valid as those of the experts.

When the ‘sociology of scientific knowledge’ grew as a field of study in the 1970s, it focused on how scientists arrive at their knowledge and how often enough they fail to take into account ‘lay’ knowledge, i.e. experience or contributions from the people without proper accreditation (Collins & Evans 2002). One such exemplary study (Wynne 1992) concerned the Cumbrian sheep farmers and the government experts who were sent to help them contain the fallout on their pastures from the Chernobyl nuclear disaster in 1986. The government radiation experts’ suggestions for dealing with the fallout on the pastures were impractical, whereas, as the sociologist found, the farmers had a much better understanding of what needed to be done (Collins 2014: 40).

The unfortunate conclusion that someone might draw is that experts know less than they might admit and that the lay public possesses some ‘lay expertise’ of their own and hence focusing on the putative experts is unacceptable elitism. This has led to what Collins and Evans (2002) termed an unfortunate dissolution of the boundary between the expert and the public. The mistake was in treating highly elite sheep farmers as ‘laymen’, when they actually were “members of an elite – the elite of experienced farmers” – they were experts in their experience and knowledge of the grazing habits of sheep and consequently understood much better what practical applications of the scientific advice needed to be taken (Collins 2014: 40-41). The inability of some experts to recognize rival expertise in different social groups can be unfortunate, but treating the neglected group as if they were merely lay-people and declaring expertise to be a failure only exacerbates the accumulated misunderstandings.

While the question of who should be counted as an expert can grow even more detailed and technical, the argument for the *desirability* of experts is much more straightforward. As Hardwig

(1985) notes, it can be very rational to refuse to think for oneself if we have good reasons to believe we are epistemically inferior to someone else, i.e. an expert, and therefore defer to her epistemic authority. What Goldman called 'epistemic paternalism' (1991) then makes sense on epistemic grounds alone. The question of expertise is here closely connected with the problem of testimony. Most of what we know, we know from relying on the word of others – testimony is truly ubiquitous. Most of what we know and take for granted, from our blood type to celestial mechanics, is also based on expert scientific testimony, without our first hand knowledge or first-hand observation and verification. I shall not discuss the epistemology of testimony and the debate between reductionism and non-reductionism about whether accepting testimonies requires non-testimonial positive reasons (reductionism) or not (but cf. Coady 1992, Lackey 2008, Lipton 1998). What is more important for our purposes here is the question of when and why we should accept a testimony from an expert. How do we recognize an expert relevant in a particular field or domain? And how do we treat conflicting knowledge claims or disagreeing expert testimonies?

For much of what we know about the world we rely on others, on their work and testimony. We trust them and most of what we believe to be true we know from them (Lackey 2008). The fact that I, writing this, am sitting in a town called Bratislava is something I know solely because of what others have told me. I have no independent means open to me to check, and while a conspiracy of cartographers is a highly unlikely event, my knowledge of my whereabouts rests on nothing else than the trust in others. Epistemology of testimony informs us that trusting others and learning from them, despite our fallibility, is an appropriate method of learning about the world and arriving at knowledge. We need to remember that knowledge is not certainty. What we call knowledge is justified beliefs that are *very likely* to 'track the truth' (if arrived at by an appropriate method). Knowledge presents our limited connection to reality, how we 'track the facts' of the world (cf. Nozick 1981, Roush 2005).

Michael Strevens (2010) argues that our knowledge of the world is essentially mediated by others who come together to form a social network whose “principal epistemic material is scientific authority”. What we accept as true knowledge rests on “trust in what scientists say”, on the epistemic authority we attribute to them (Strevens 2010: 295). More often than fear of fraud or dishonesty, what drives concerns about a presumptive knower’s veracity is his or her level of competence. When it comes to ‘proximal authority’ in their field of study, the correct reflection, recognition and reporting of the patterns of phenomena, reliability and reproducibility of their findings, is what drives the scientists’ reputation and bestows greater or smaller scientific authority (Strevens 2010: 295). The authority is probably best assessed through *calibration*, both direct and indirect, a rough (back-)tracking of the reliability of the past pronouncements of scientists and others scientists’ assessment of them (Strevens 2010: 297-298).

Yet our (epistemic) trust is intertwined with our beliefs. What you know and “what you believe depends on who you believe [a]nd who you believe depends on what you believe” (Herzog 2006: 105). Our experience and prior beliefs matter greatly in how we assign epistemic authority to others. To an extent rationality of our beliefs (unlike truth itself, of course) is relative – it depends on what we believe already and how well something new fits within it (Herzog 2006: 106). We assign epistemic authority to our communicators based on certain indications of trustworthiness. These are negotiated in our communicative practices and we as speakers and hearers share an epistemic responsibility to avoid any factors that could bias our judgment. Gloria Origgi (2008) highlights that these standards are adjusted continually as conversations go on and contexts and interests vary. Our epistemic responsibility is “a matter of adjusting our way of interpreting what other people say to epistemic needs”; we look for the information that is not only true but “relevant enough in a particular context to deserve our attention” (Origgi 2008: 42). Our stance of trust to epistemic authority is both tentative and contextually relative. Thus, when we assign someone an expert status, i.e., credit her as an epistemic authority in a particular domain, we do so because of an interplay of contextual institutional and communicative cues that what she says has relevance to us.

Though justified and essential, this assessment of authority is not without flaws. For one, it is somewhat nebulous – scientific authority and reliability is not exactly quantifiable and determinate, merely a ‘good enough, close enough’ estimate placeholder. Furthermore, there is always a problem to find an adequate track record and details in order to form a reliable picture – often enough the calibration will rely only on proxies – a prestigious publication, grants and awards, good university, or a renowned supervisor. Finally, there are network problems: unbeknownst to the calibrator there are informal networks, and some second-order assessment of authority she will rely on can be poisoned by instances of back-scratching, or logrolling, i.e. motivational artifacts not tied to truth-regarding practices (Strevens 2010: 299-302).

Of course, testimonial practices, ubiquitous they may be, are not automatically or necessarily only truth-regarding and veritistically accurate. As Goldman notes, “[e]pistemic incompetence and private interest often lead to inaccurate, insincere, deceptive, or incomplete information.” To assist correct recognition of reliable informers we have developed a set of ‘indicator properties’ signaling trustworthiness. Of course even these indicators can be imperfect and have been in the past prone to track identity prejudices and bias (Goldman 2010: 200). Thus, for example, being a gentleman in 18<sup>th</sup> century England was an automatic mark of being trustworthy (Shapin 1991, Shapin 1994), whereas whole segments of population lacked the requisite credibility simply because of their gender or social position (Fricker 2007). Nevertheless, they are still better than nothing, clues and indicators of credibility, though fallible, are indispensable guideposts in our division of cognitive labor.

## 2.2 Recognizing Experts

Today the task set before lay citizens is to be able to assess expert testimony relevant for democratic policy-making – even though they are often incapable of assessing the merits of the research itself. Expert-layperson relations bear the hallmark of the standard asymmetry of information (Goodwin 2010): a layperson requires expert opinion, but her lack of knowledge is also what makes her incapable of assessing the expert claims and trustworthiness.



“[P]rofessionals have power over lay principals by virtue of their expertise, functional indispensability, and intrinsic ambiguity associated with the services they provide. Such agency exchanges involve information asymmetry that is particularly severe, since principals do not possess the technical knowledge to evaluate the effort invested or the outcome accomplished [...] [T]his knowledge asymmetry – arising from a difference in task-related knowledge – is distinct from the information asymmetry with which much of the mainstream literature is concerned. Not knowing *how* the agent does a job is distinctly different from and compounds the problem of not knowing *what* the agent does.” (Sharma 1997: 768, emphasis in the original)

Yet, we as laypersons do listen to experts in various settings all the time and make these assessments despite our seeming lack of mental wherewithal to do so. Goodwin maintains that “the skill of judging trustworthiness is widely distributed; indeed it’s available to anyone who is willing to devote some time to practicing it in their everyday life” (Goodwin 2010: 141). Walton (1997: 223) suggests our assessment can be formalized if we ask the following critical questions in order to establish whether to rely on expert claims:

1. *Expertise Question: How credible is E as an expert source?*
2. *Field Question: Is E an expert in the field that [assertion] A is in?*
3. *Opinion Question: What did E assert that implies A?*
4. *Trustworthiness Question: Is E personally reliable as a source?*
5. *Consistency Question: Is A consistent with what other experts assert?*
6. *Backup Evidence Question: Is E’s assertion based on evidence?*

These questions are a good starting point that gives the layperson means to assess the challenges of informational asymmetry in transactions with experts: the questions are aimed at both moral hazard

(in this case: shirking – has the expert done his best in the principal’s interest?) and adverse selection (in this case: who is the relevant expert?) (Goodwin 2010). When the lay public decides to rely on the expertise, they are not assessing the content of the claims, but “the trustworthiness of the purported expert” (Goodwin 2010: 141).

Goodwin further suggests focusing on methods that would enhance trust in expert/lay relations. The brunt of the difficulty should not lie with the lay public. Goodwin believes experts themselves have good reasons to make the transactions succeed. Experts should engage in “reputational bonding” and by committing themselves to the opinion they are giving – staking their reputation on it – they can give the layperson new reasons to trust them. Experts hence “have incentives to discover or create practical communicative means to signal their expertise in such a way that layfolk will be able to assess it with confidence” (Goodwin 2010: 142).

This recognition is tied to recent advances in social cognitive psychology. Dan Sperber et al. (2010) discuss the psychological mechanisms of our individual ‘epistemic vigilance’ and argue that for epistemic vigilance to work at a population scale, a set of appropriate institutional and cultural practices need to be in place. Cognitive psychologists postulate that a default ‘tentative trust’ is part of our communicative reasoning. We are “disposed to critically examine communicated information only when circumstances motivate” us to do so (Sperber et al. 2010: 363). This vigilance then is by no means a blind trust but neither is it automatic incredulity: received communications are guided by an expectation of relevance and comprehensibility and are assessed based on their content and source. In other words, we tend to accept what we hear, if the source is trustworthy and if we can make sense of the information (it does not conflict with prior beliefs too much). This filtering role of epistemic vigilance plays an important role in our face-to-face communications, but the underlying mechanisms “are not geared to filtering information transmitted on a large scale” (Sperber et al. 2010: 382). Therefore it needs institutional buttressing at a population scale.

Institutional procedures, involving reputational rankings, certifications and sanctioning and curating of background information, may provide better recognition of trustworthiness “than cumulative effect of spontaneous vigilance exercised by individuals” (Sperber et al. 2010: 382). Vigilance toward content is typically exercised through debate and argument, which can take various institutional forms, e.g., judicial institutions employ trials, cross examinations of witnesses and evidence, etc. In science this institutional organization geared toward epistemic vigilance is probably the most elaborate and involves assessment of observational and theoretical claims via “social processes such as laboratory discussion, workshops, conferences, and peer review in journals [...] assessed through rankings” (Sperber et al. 2010: 383). These social mechanisms are to a large extent “articulations of psychological mechanisms linked through extended chains of communication and ... institutional patterning” ultimately resulting in a complex and formidable “distributed epistemic assessment system” (Sperber et al 2010: 383). A distributed cognitive system such as *science* then warrants our belief – adopting a stance of tentative reliance and trust in its testimonies is well within the scope of our epistemic vigilance.

In other words, there is the possibility of following certain indicators signaling expert trustworthiness and reliability. Anderson (2011) offers one set of such criteria of second-order judgment of expert claims, along with their honesty and epistemic responsibility<sup>15</sup>. First, the simplest way to assess an expert claim is through a hierarchy of expertise: from laypersons, through people with various science degrees and up to doctoral degrees, to scientists who are active in the field in question, are widely recognized by their colleagues, cited and published, up to the leaders of the field, who “have taken leading roles in advancing theories that have won scientific consensus or opened up major new lines of research, or in developing instruments and methods that have become standard practice” and won awards and other prestigious positions. The higher the putative expert is on this scale, the

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<sup>15</sup> See Goldman (2001) for a similar set of criteria, emphasizing their previous track record. Also, see De Winter & Kosolovsky (2013) for a fruitful discussion of the concept of epistemic integrity in scientific research and Grinnell (2013) for an examination of research integrity in everyday practice of science.

more we have a reason to listen to their testimony about the issues in his domain. It is relatively easy to apply these criteria, since all the required information are usually readily available on the web. (Anderson 2011: 146-147)

Secondly, when judging the experts' honesty, there are several factors to look for that might discredit or severely impinge on the reliability of their testimony. The list proposed by Anderson is not by any means exhaustive and some of it can be hard to come by. However, there are clear-cut cases, such as: evidence of a conflict of interest<sup>16</sup> (e.g., funding by a vested interest); evidence of academic dishonesty, plagiarism, incorrect citations, data cherry-picking, misquoting, misusing statistics, faking experiments, as well as misrepresenting the arguments of opponents, or making false accusations of dishonesty (Anderson 2011: 147).

Finally, there are factors which might indicate evasion of accountability, and thus can be symptoms of epistemic irresponsibility. There is the evasion of peer-review, the failure to share one's data, to reveal one's methods and procedures and the general failure to submit one's research findings to the scrutiny of his peers in the relevant publications. There is also the dialogical irrationality of repeating refuted claims without providing new evidence, and advancing 'crackpot theories' in domains outside of their area of expertise, or even willingly associating with other known crackpots (Anderson 2011: 147-148).

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<sup>16</sup> See Wilholt (2009) for the defense of the notion of preference bias as an epistemic shortcoming in research and the need for conventional scientific standards for trust maintenance in research community. At the same time, Zenker (2011) makes a compelling case why the *conflict of interest* objection to expert arguments has no purchase. Either we can also show the experts to be wrong on the merits of their propositional content and a *circumstantial ad hominem* does not add anything to our argument, or relying on alleged conflict of interest alone does not suffice to discredit expert authority. Even if motivations of the experts can be successfully established "one would still need to demonstrate – presumably by raising arguments – that self-interested, or interest-conflicted, arguers have somehow let themselves be led astray in particular cases. [...] [N]othing seems to be gained from 'insight into interests' that could not also be treated by showing, for the particular case, that another standpoint is equally well or better supported" (Zenker 2011: 367-368).

However, matters can get more complicated for lay persons when experts seem to disagree. The first thing open to examination is whether there exists a consensus of experts on the issue. The very fact that there seem to be two people with PhD degrees disagreeing on a matter is in itself not that problematic. As Ben Goldacre noted, "[t]here are few opinions so absurd that you couldn't find at least one person with a PhD somewhere in the world to endorse them for you" (Goldacre 2009: 97). Consensus is in place when the "vast majority of diverse inquirers converge on certain conclusions". Then it is best for the layperson to suspend her judgment and "accept the consensus even in the face of a handful of dissenting scientists" (Anderson 2011: 149). The scientific consensus on a given topic can best be identified by examining the survey articles in the peer literature, consensus statements and reports of the leading scientific organizations in the field or even in encyclopedia articles and university textbooks (Anderson 2011: 149).

Of course, the consensus may not always be readily apparent or even to be had at all. The issue of disagreement between epistemic peers has received a lot of attention in the literature (Goldman 2001; Matheson 2005; Kelly 2011; Coady 2006; Coady 2012). It is not unimaginable that a policy-relevant question is also a fountain of bitter and acrimonious scientific disagreement between epistemic peers. But apart from assiduously applying the suggested criteria of identifying the correct experts, as suggested by Anderson (2011) and Goldman (2001), there seems little to do for the lay person in this particular scenario, except for 'going by the numbers' – i.e., following the side in the argument with the superior numbers in the relevant expert community<sup>17</sup> (Coady 2006, 2012).

When discussing expertise, it should be also noted that knowledge has an inherently social nature and cannot be completely divorced from socio-economic relations and situations. Knowledge, and even an appearance of knowledge, can be a 'social power' – an expert, or anyone who is seen as knowledgeable is someone who has reliable and credible indicators of such epistemic authority.

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<sup>17</sup> It should be noted that there is a disagreement on this particular solution in the expert epistemology community, with Goldman (2001) and others arguing against it. See Coady (2012: 38-46) for an illuminating analysis.

Miranda Fricker (1998, 2007) noted the possibility of an ‘epistemic injustice’ – when the structures of prevailing social power influence unduly the norms of credibility which govern the perception of competence and trustworthiness. This social power can thus bring about “a mismatch between rational authority and credibility – so that the powerful tend to be given mere credibility and/or the powerless tend to be wrongly denied credibility” (Fricker 1998: 170). The point is that social and cultural context can govern and limit how one’s competence and trustworthiness are rated and society’s ‘background injustice’ can be translated into an epistemic inequality as well.

However, for our purposes here we will assume fair epistemic practices, meaning that the ‘norms of credibility’ designed to define expert competence and trustworthiness are not skewed or unfair to any social group. My point would be that even if we work out the background injustices, and equalize the opportunities for everyone through educational and social systems, ensuring equal public standing of citizens, this will not affect the inherent unequal epistemic capacities of citizens due to genetic dispositions and due to expected social division of labor and specialization. Therefore the concerns over experts in democracy cannot be simply dismissed by suggesting an alleviation of any alleged discriminatory practices present in our current knowledge production and dissemination.

It would be also useful at this point to contrast the notion of an expert with that of public intellectuals who are usually understood as arbiters of public values and influencers of political discourse (cf. MacLean et al. 1990). When we think of an intellectual as being an expert, we perceive him in this status “as a possessor of a specialized range of practically effective knowledge – the intellectual in his role as a ‘professional’ or ‘expert’ to be consulted in relation to projects directly relevant to his own field of knowledge” (Levy 1990: 126-127). The intellectual is authorized by his specialist knowledge, but if he starts pontificating outside of his field of specialty, he loses much of the status. It is of no use for him if he is also rhetorically gifted, i.e., a specialist in the use of words, since “his forays outside his own specialized field of knowledge are of no more cognitive value than anyone else’s” (Levy 1990: 127). If he is actually convincing (or charismatic) in his public

pronouncements, we may conclude, pace Dworkin (2000), that the intellectual may have more *influence* than the average person in shaping the political discourse, however his direct *impact* on it is subject to the same political procedures as everyone else's. In general, we would not just listen to any expert - we would, for example, consult an architect about the structural integrity of a proposed building project, or a plumber on the clogged water pipe, but we would not give either of them a special hearing when it comes to judging, say, the country's immigration policy. And especially when it comes to pronouncements on morals and judgments of values, we would be even more skeptical, since in this sense we are all more or less amateurs.

In fact, intuitively we feel discomfort with the very notion of moral experts, i.e. people who have a greater claim to more and better moral knowledge or judgment than us (Driver 2006: 629). This is not because it would imply a suspension of our autonomy – for one thing all trust implies a suspension of autonomy to some degree. More importantly however, it need not run against autonomy as such to submit to an expert judgment (be it a reasoning or an aesthetic expert) – we may have a higher order reason and make an autonomous decision to submit based on the expert's reliability (Driver 2006: 635-636; also cf. Hardwig 1985, Goldman 1991). However, moral experts, unlike reasoning experts and even aesthetic experts, have a harder time providing markers of their reliability. Not only is it harder for them to show they are truly disinterested, impartial and reliable (Driver 2006: 639) but the nature of their expert claim holds a greater sway over one's life which places a further burden on their credibility that seems impossible to overcome. A similar point has also been raised by Cholbi (2007) who points to an insurmountable problem of providing accurate and reliable *credentials* of their putative expertise.

Indeed, with the notable exception of Peter Singer (1972: 117), who argued that moral philosophers can think full-time about moral issues and are trained to think and argue logically about moral concepts, the idea that there are objective 'moral experts', i.e. people who have more knowledge

and better answers about moral truths, is met with almost universal rejection (Archard 2011; Driver 2006; Cholbi 2007).

However, Archard argues that lack of agreement and readily available criteria for identifying moral expertise are not the clinching arguments they may at first seem. For example, the argument is rife in any expert domain, usually a sign of vitality and debate; it does not neutralize the fact of expert knowledge (Archard 2011: 121). Nor does the factual absence of lay acquiescence to expert judgment discredit the concept (Archard 2011: 123). However, unlike many scientific propositions, the moral truths seem more readily available and are more widely distributed in the society – either in intuitions or ‘common-sense morality’, which leaves the putative experts only as better informed about various moral theories, or about the origins of morals. However, the most persuasive argument against the notion of moral expertise will be grounded in the notion of autonomy. It is particularly important for citizens in a democracy, engaged in discussions about values, to work out important moral questions and reach particular conclusions on their own (Archard 2011: 126; Coady 2012: 55).

Finally, it should be noted that some of the skepticism over experts by lay public can be driven by incorrect labeling of experts, simply misrecognizing that what is an expert by reputation is not a true expert at all. Being skeptical of someone’s putative expertise on a subject can be a healthy thing; however, it is not good to let it lead us to skepticism over expertise as such. More generally, someone may feel skeptical of relying on experts because it feels elitist – it implies someone’s opinions are more valuable. But this is an error, though one with an impressive pedigree, committed by no lesser figure than the iconoclastic philosopher of science, Paul Feyerabend.

Feyerabend is known for his skeptical attitudes toward scientific expertise as such and his suspicions about the role of expert scientists in the public sphere (Feyerabend 1978, 1993). In his prescriptions (1978) he prioritized democratic politics over any exalted status of expert authority. Feyerabend’s worry about experts’ propensity for dogmatization of their views along with their increasing



relevance for policy development has led him to the espousal of institutional mechanisms that let laypersons judge expert views and research agendas. He went as far as suggesting that “elected committees of laymen must examine whether the theory of evolution is really as well established as biologists want us to believe”, or that they should “examine the safety of all nuclear reactors in each individual case and must be given access to *all* the relevant information” or investigate whether “people’s minds are properly judged by psychological tests” (1978: 96-97).

The problem with Feyerabend’s account and similar accounts is that they “romanticize laypeople and their capacities” (Selinger 2003). Selinger argues that, while most critics have focused on Feyerabend’s straw man views of experts, his biggest failing lies in his reliance on “an exaggerated view of the epistemic capacities of laypeople” (Selinger 2003: 360). Feyerabend bases his views of the epistemic capacities of laypeople on anecdotes about outsiders recognizing specialist mistakes (in the context of expert witness cross-examination), the relative ease with which army medics achieved their medical skills in several months long army trainings, or even self-deprecating *bon mots* of Bohr or Einstein describing themselves as mere dilettantes. All of these are selective and hardly illustrate anything about actual capacities of laypeople. Lawyers may not be experts, but neither do they try to establish truth – they work in an adversarial institutional setting; they are themselves experts in exposition of fallacies and rhetorical weak points. It is also highly doubtful that army medics trained for combat situations have expertise and a skill-set comparable with physicians trained for many years (Selinger 2003: 366-369). Because he never considered experts as anything more than an arrogant interest group, he committed the ‘superman fallacy’ of ascribing the general cognitive aptitude that comes with expertise to basically anyone (Selinger 2003: 372).

Indeed, some people’s opinions do matter more, because they know more about the subject, but there is nothing necessarily elitist about recognizing this fact. We are all experts and novices about different fields and subjects (Coady 2012: 31). For example, in this way I am the preeminent expert when it comes to knowing my mental states, all around me are novices in this regard, and even

though they may not share my enthusiasm about the subject, should they desire more information, they will hardly find anyone whose opinion on this subject matters more than mine. We are all experts and novices in turns at different subjects – it is only that some are experts in the fields which others find highly relevant. However, bestowing the title of expertise on someone does not go against the principle of equal worth and make him a better human being, automatically deserving of more respect.

Going forward, experts then will be understood in the first approximation simply as more knowledgeable or educated individuals, though we will read them later on more specifically as holders of specialized knowledge (usually) produced by academic research, who (can) provide relevant cognitive input into the political decision-making. These scientific experts can lay claim to epistemic authority from their involvement in scientific practices. Science, epistemologically considered, is a set of cognitive practices aimed at discovering the truth (Goldman 1999; Ziman 1991). Science has certain epistemic authority but not because it possesses true knowledge. Science does not have the truth and nothing but the truth, it might be even too much to say that it has most of the truth most of the time. Most philosophers of science instead adhere to a view termed ‘convergent realism’ which would postulate that scientific practices are *progressing* toward true knowledge. Even though our current state of knowledge might not be the final truth, we are getting better and better at getting closer and closer to it. Goldman proposes a cautious thesis about the epistemic authority of science: scientific practices simply fare the best out of all possible rival practices in answering the sort of questions science usually seeks to answer, i.e. it is comparatively superior (1999: 247).

In democracies we sometimes expect that those with comprehensive knowledge get to decide on matters of great importance. We might note a distinction here between a social and an epistemic authority. Having social authority means to be positioned within an institutional hierarchy in a way that implies power to command (and a right to be obeyed) whereas an epistemic authority does not

imply a direct relation to power. Instead, it merely indicates that some persons possess knowledge which makes it “worth paying extra attention to what they say concerning certain issues”, so that in their area of expertise their “words are taken at face value”, i.e., their “testimony is authoritative” (Mikalsen 2010). Yet, the operation of democratic politics sometime seems to be granting social authority simply because of one’s epistemic authority. We also delegate some authority to specialized bodies precisely because we expect them to be correct and make informed decisions<sup>18</sup>. This implies a potential tension between what is epistemically responsible and what is democratically legitimate and raises the question of experts working in democratic policy contexts. The solution lies in looking at the institutional framework within which such experts operate, though it can be tempting to define the problem away by expanding some of the key terms of the debate. The following chapter engages such an attempt, which proposes that it might be fruitful to revisit the concept of political representation.

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<sup>18</sup> According to Bayles (1987) a justifiable administrative cannot be sharply distinguished from an epistemic authority. They could be termed “policy authorities” instead of pure epistemic authorities; nevertheless they can be very similar. Bayles believes that normal delegation may seem suspect, once these administrative bodies provide good reasons for their actions and goals and these are found to be mostly correct, i.e. they prove themselves to be truly experts, if they have proper credentials and demonstrate the impartiality of their procedures to the public, then “citizens may have good reasons to accept” their authority, just as if it were an epistemic one (Bayles 1987: 299).

### 3. Experts as Political Representatives

#### 3.1 Introduction

Scientific experts exert influence over the shape and scope of many policies and their research charts new areas of potential conflicts over interests and values. At the same time, their growing influence on political decision-making seems to be pitted against some very basic expectations of fair democratic procedures and equal citizen engagement in governance. If we are looking for potential ways how to fit expertise within a democratic framework it is tempting to look at arrangements that would allow experts to provide relevant political input in our decision-making while maintaining political fairness. One solution that suggests itself in the literature is the need to revisit the conception of political representation and outline the place of experts in democratic decision-making within it, positioning experts as representatives of citizens and their broader interests (Brown 2006, 2009; Saward 2010).

Political representation has been presented in recent literature as a process of mediated consultations, discussions and decision-making not constricted to narrowly understood assemblies, but a dynamic interaction with the constituent public (Urbinati 2006, Disch 2011, Saward 2010). While mostly sympathetic with this re-drawing and extension of the concept of political representation, in the following paragraphs I will argue that it does not solve the quandary of scientific experts and their increasingly important role in our public life. The argument is essentially a conceptual one and I will argue that the rethinking of the framework of political representation is not ideal for the resolution of tension between democracy and expertise. The general conclusion of this chapter, which is incidental to my overall project, is that experts can serve as a useful borderline case demonstrating the necessary limits of trying to extend the systemic conception of political representation indefinitely.

It is tempting to view experts as representing our interests. The more we perceive the political problems to be questions of knowledge to which we may discover correct, objective answers, the

more it may make sense to view the representative as an expert and deem the opinions of the voters irrelevant. Pitkin observed this tendency to regard experts as a sort of representatives: “whenever we seek professional help or services, we are asking to be represented” and by turning over the reins to the specialist we commit ourselves in their care just as a patient does when selecting a doctor. The implication is that the specialist will know better, and if he represents the patients’, i.e. the citizens’ real will “he need not take orders from his constituents” (Pitkin 1972: 135-6). However, Pitkin flat out rejected the notion of an expert as a political representative: “The expert scientist solving a technical problem is not representative at all, is not deciding anything, is not pursuing anybody’s interest” (Pitkin 1972: 211). For Pitkin political life is “always a combination of bargaining and compromise where there are irresolute and conflicting commitments, and common deliberation about public policy, to which facts and rational arguments are relevant” (Pitkin 1972: 212). Relevant, but not decisive, since rationality, as Pitkin also notes, is not always a guarantee of an agreement. Political representation is not needed when “we expect scientifically true answers, where no value commitments, no decisions, no judgment are involved” (Pitkin 1972: 212).

At the same time, a sharp disconnect between science and politics may not be possible as scientist will continue to produce research that has increasing relevance for our social lives and the provision of scientifically true answers may require *real* ‘value commitments, decisions and judgments’. If scientists are to be something else than paternalist technocrats, it has been argued, we may need to rethink the political framework of representation, where experts and laymen are engaged in mutual consultations<sup>19</sup> (Brown 2009: 257-260).

The *in extremis* notion of apolitical work of the experts cannot hold anymore, since their work does “involve both facts and value commitments, both ends and means” and in this sense falls well within the intermediate range located by Pitkin, where political issues reside and where representation can

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<sup>19</sup> The increasing importance of science in policy-making may also require the abandonment of ‘the value-free ideal’ in scientific research and an embracement of a more public role for science (Douglas 2009).

take place (Pitkin 1972: 212). According to this it might seem Pitkin was too quick to dismiss experts from the framework of political representation. It looks like a failure to perceive the extent to which the expert's proposed solution and the nature of the problem they tackle may in fact decide too much and affect the interest and values of various elements in the community.

Indeed, the notion of an expert as some disinterested problem-solver who simply applies some uncontroversial procedure to the problem at hand is a technocratic fable that runs against the experience of the decision-making complexities our societies face. As we have seen previously, an expert is not only an astrophysicist trying to locate the boson, or a forensic anthropologist delivering her expert testimony in court, but she can be a health specialist, or an economist, deeply immersed in our society, on behalf of which she is called to provide some expert opinion. At the time of Pitkin's writing it was uncontroversial to refer to experts as neutral technocrats, though today this usage seems dated. However, in the following paragraphs I will revisit the concept of political representation and offer some reasons why Pitkin, despite this anachronism in her writing, was fundamentally right in her dismissal of experts as political representatives.

The first part of the chapter recapitulates Hanna Pitkin's seminal contribution to the theory of political representation. I will briefly expound on the importance of political representation and then follow Pitkin's conceptual analysis. The first part concludes with expounding of Pitkin's systemic view of political representation and her continued relevance for today's democratic theorizing. The second part offers a brief overview of the 'representative turn', then moves to the example of representative claim-making as a particularly unpromising extension of the systemic view of representation. The second part then concludes by offering reasons, using experts as an example, why it makes sense to delimit the conception of political representation by some formalized requirements.

## 3.2 Political Representation

### 3.2.1 Representative Democracy

Despite being around for over 200 years political representation may still seem suspect to the democratically inclined. But this distrust is misplaced. Simply because a particular institutional arrangement gives more decision-making power to a select group of people, does not make it inequalitarian in the important respects. Contrary to expectation and despite the seemingly inequalitarian arrangement of indirect lawmaking, representative democracy has the potential to be more egalitarian than direct democracy. Thomas Christiano (2008) suggests this is simply in virtue of a more effective division of labor that allows a diverse citizenry more scope of influence over the decision-making. Without this division of labor in a direct democracy citizens would be capable of doing a lot less and the power would be transferred elsewhere, in a less straightforwardly equitable and formalized way (Christiano 2008: 105).

However, it would still be imprecise to view political representation as some unfortunate compromise we have to make between some ideal of direct democracy and messy realities of our modern lives. On the contrary, many theorists today argue that, simply put, “representation is democracy” (Plotke 1997) and representative democracy could be probably seen as a ‘tautology’ (Näsström 2006). Contrary to Barber (1984), representation should not be viewed as an opposite of political participation, but as a crucial element that constitutes our democratic practice and actually enables participation. Without political representation we would have no contours of the political reality – we would lack the very conception of the people as a political entity (Ankersmit 2002: 115). The fact that representative democracies are more complex and complicated than an idea of a direct democracy is not a drawback.

Furthermore, notions of direct participatory democracy do not fail because of the scale of politics in modern societies, but “because of core features of democracy as such”. Democracy is premised both on a “commitment to reaching decisions” and on individual autonomy, which would include the

differing ideas about individual involvement in politics. Any direct democracy would either have to suppress the autonomy of its citizens by making their participation mandatory or it would necessarily 'scale back' in practice with only some people continually participating and become "a *de facto* representative" democracy but "with no legitimate basis for selecting members or making decisions." (Plotke 1997: 27)

When "direct personal domination is replaced by procedures that rely on more general and abstract relations among political agents" we obviously lose 'simplicity', but we do so while also expanding "the number of voices in conversations about what to do". It is a mistake to view representation as overly complex and it is also a mistake to view it as a device that makes people passive and absent from political decision-making. Representation is not some passive submission, but should be viewed in its active and relational dimension, where participation of citizenry is an inherent part of the scheme (Plotke 1997: 24, Young 2000, Urbinati 2006).

At the heart of the conception of representation lies a paradox identified already by Pitkin, and that representation involves a presence of something to fill the absence of something else, or "making present *in some sense* of something which is nevertheless *not* present literally or in fact" (Pitkin 1972: 8-9). Pitkin believed this to be a semantic puzzle, but nevertheless one that has profound implications also for the practical politics in a democracy. The non-physical presence of the citizens is not unreal, but artificial and yet genuinely felt (Runciman 2007: 95).

### **3.2.2 The Concept of Representation**

In her extensive survey Pitkin (1972) observed how a relatively simple concept of representation, where the etymological meaning to *re-present* seems to point to a straightforward definition, i.e. to make present again, or to make somehow present something that is not present literally, can come to have varied meanings and applications depending on the context in which it is employed. She distinguished several such applications advocated by various political theorists, each emphasizing a



certain facet of the concept, and even though each was essentially correct, it usually neglected other features and thus failed to give the concept the full treatment it deserved.

First among them, and usually the most popular, are the *formalistic views*, which emphasize the formal side of a representative relationship, where someone has been authorized to act on behalf of someone else. The *authorization view* stresses only the formal aspect of getting the authority to act, the capacity to bind the represented by her decisions, but offers no standard of what it means to represent, or pace Hobbes, any reason why this act of authorization needs to occur more than once. It views representation as a black box, with representation occurring whenever someone has been formally authorized to act, but because of its empty formalism it makes the very notion of representing *badly* impossible (Pitkin 1972: 39-44, Runciman 2009).

Similarly, an *accountability view*, which would define a representative as someone who is to be held to account, be responsible to those she represents, that is, be subject to a (re)election, ends in empty formalism. Defining representation by its termination (instead of initiation as the authorization view does) again says nothing about what it means to represent – a completely irresponsible and reckless representative is still a *good* representative as long as she is willing to be terminated from her office at a prescribed date (Pitkin 1972: 58). As we shall see, these formal aspects of a representative relation are very important; however, they do not tell the whole story of representation.

An altogether different set of views of representation emphasized the *descriptive* part of representing, how the representative body adheres to, resembles, reflects or mirrors the represented. Representation under this view is not acting on behalf of someone (with the authority to do so), but “standing for” someone in virtue of some connection or resemblance. Drawing on the aesthetic logic of representation, in political terms a political body that means to represent can do so only by resembling what it purports to stand for – it needs „likeness“, „accurate reflection“, it has to be an „express image of the composition and feelings of the nation“. What matters then is the composition and the verity of the picture, how it presents and makes heard all the varied groups in a

population. Not an actual replica of the people, but still a rendering, depicting, that should be able to convey important information about the represented, so that the representative body can act at once as a mirror and a mouthpiece of the nation (Pitkin 1972: 60-63).

Though initially appealing, there are a host of problems associated with this view, as Pitkin herself makes extensively clear (Pitkin 1972; see also Goodin 2004). The inherent simplism of the view becomes obvious once we try to pinpoint which features should be the relevant ones. For example, hardly anyone would probably complain that the representative body contains too few incompetent people to be truly representative<sup>20</sup>. Should then the representatives be somehow *typical*, or should they be averages? And how accurate does the representative body need to be? A stick figure can represent a man as much as a portrait by Rembrandt (Pitkin 1972: 88-91). The view can be helpful when supplying information about the represented is needed, or when a specific group or a social perspective becomes politically relevant (Phillips 1995, Mansbridge 1999, Young 2000). However, in its pure form it becomes as empty as the formalist views. It has no account of meaningful political action, of acting on behalf of the represented, nor does it formalize the requirements of becoming a representative (Pitkin 1972: 90-91).

Similar “standing for” is implied by the *symbolic representation* view, where a particular symbol stands for or recalls by its presence a complex notion. A flag represents a country, the king represents the monarchy, or the symbol of scales can represent justice – the symbol is never merely descriptive and not intended as a source of information, rather the symbols “seems to be the recipient or object of feelings”, the focus of appropriate attitudes and intended actions (Pitkin 1972: 99).

The connection between the symbol and the referent is mostly arbitrary, and exists only in so far as someone believes it exists – as such symbolic representation is existential, present only in the beliefs

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<sup>20</sup> Or as Pennock (1968: 11, fn.18) so indelibly put it when paraphrasing Griffiths (1960: 190): “no one would argue that morons should be represented by morons.”

of people, it rests purely on their emotional, affective responses. In politics under this view representation is a state of affairs, not an activity, as long as the representatives are believed in and accepted by the represented, they represent. If it involves any activity, it is one of making people believe in the symbol. This may be relatively innocuous, for example involving ritual activities with ceremonial figureheads standing in for the nation as a whole, but for the representation to exist it does not really matter how the audience is induced to accept and believe that someone stands for them. The real representative is someone capable of making herself be believed in, an effective leader who can come to embody the unity of the people (Pitkin 1972: 100-108). This leads directly to the fascist conception of representation, where the leader by political machinations “daily creates and re-creates this unity” and “gets the support of others and *makes them want what he wants.*” (de Visme Williamson 1941:35, emphasis in the original).

But at the same time the symbolic representation correctly emphasizes the importance of believing in one’s representatives, and just as the descriptive view introduced the importance of correspondence between the represented and the representatives, the symbolic view brings to our attention the importance of affective states, satisfaction and pleasing one’s constituents (Pitkin 1972: 111).

Finally, Pitkin introduces the view of *substantive representation*, a view of representation as acting for someone. The idea of acting for others involves expectation of special behavior and certain obligations. It comes prepackaged in the English language with a variety of analogies and possible roles that have been put forward with the intention to illuminate the activity of representing<sup>21</sup>. In fact, there may be too many rival terms, all plausible but somewhat suspect and incomplete at the

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<sup>21</sup> Pitkin lists several adverbial expressions for acting: *to act for, in their stead, in their place, on behalf, in their place, in their name, on their authority, for their sake, in their interest, in accord with their desires, wishes, welfare, wants, needs, to act as they would have acted.* Similarly, *a representative has been likened to: an actor, agent, ambassador, attorney, commissioner, delegate, deputy, emissary, envoy, factor, guardian, lieutenant, proctor, procurator, proxy, steward, substitute, trustee, tutor, or vicar.* (Pitkin 1972: 119)

same time. Common to all of them is a) an element of action; b) an element of taking care of, acting in the interest of someone; c) an element of substituting someone; d) an element of being sent somewhere, with a message, or instruction; and e) an element of specialization (Pitkin 1972: 121).

It is this final element that concerns us here – the idea that by delegating some of our tasks or interests to specialists, we let them represent us. We commit our health to the care of doctors, our pipes to a plumber, and our contracts to a lawyer, all of which can lead us to accept the notion that “whenever we seek professional help or services, we are asking to be represented”. This shifts the notion of representation into pure trusteeship, where the expert, since he knows better, should be left alone to do his job (Pitkin 1972: 135).

When transported into the political realm this could lead us to believe that a representative qua expert does not need to listen to his constituents, he already possesses the specialized knowledge required of him and he knows what is in their interests, even though they themselves might dislike it. The average person, the argument might continue, does not possess the necessary skills or knowledge to govern anyway, but at least he understands enough to know how well he is governed. The average voter may (dis)approve of the job and do the only thing he has the capacity for: select the expert to take care of him (Pitkin 1972: 136-137; cf. Dahl 1989: 52-54).

The trouble is, the analogy does not hold: specialists generally do not represent their clients. As Pitkin notes, we cannot attribute their actions to their clients, and it does not make much sense, for example, to offer an explanation that “The patient cured himself by the agency of Dr. Smith”. Furthermore, the relationship is conceived as purely paternalistic, the connection between the representative and the represented in this scenario is one of subordination, where the represented not only has no place to say anything about the activity conducted on his behalf, he is not even seen as capable of doing so. But the idea of representation requires us to see the representatives acting instead of someone; his actions should be attributable to those he acts for in a way that we could imagine the represented acting himself (Pitkin 1972: 139-140). The analogy of a specialist who by

acting in our interests represents us is just one of many possible analogies the substantive view enables, yet like most of them, it remains limited and imprecise.

By the substantive acting for others Pitkin wishes to emphasize the action of representing instead of the formal trappings preceding or following it, or the characteristics of the representative. To represent, for Pitkin, means to act in a way the represented themselves would have acted. This boils down to two choices: either act on the wishes or the welfare of the represented. This is the nutshell of the longstanding controversy in political representation: should the representatives act as trustees, acting as they see fit, in the best interests of the represented, or should they be delegates, following the will and wishes of the represented to the letter.

Instead of leaning either way, Pitkin points out that this '*mandate-independence*' controversy is an insoluble puzzle, since it rests on a conceptual confusion. It asks us to choose between two elements that are necessarily both involved in representation. To insist that a representative is a delegate negates the necessity of having someone act for you – if all we need is a mouthpiece, we could just as well elect by means of sending an envelope containing our express wishes. On the other hand, a free agent that habitually thinks and acts contrary to what the represented consider wise or due is hardly a representative, but more a pretender and usurper. Any view of representation has to accommodate both sides. Representation for Pitkin then is an activity, where the representative acts independently in his constituents interests and yet does not normally conflict with their wishes (Pitkin 1972: 149-155):

“[T]he represented must be both present and not present. The representative must really act, be independent; yet the represented must be in some sense acting through him. Hence there must be no serious persistent conflict between them. [...] the represented must himself be capable of action, have a will and judgment of his own; otherwise the idea of representation as substantive activity is not applicable. Taking care

of someone or something helpless or totally incompetent is not representing.” (Pitkin 1972: 154)

Despite Pitkin’s conceptual clarification, the controversy persists and the distinction still emerges in theoretical writing. For example, Thomas Christiano (1996) insisted that the representatives in a legislative body can be seen as delegates or trustees depending on the role they are tasked with. It is the role of citizens in a democracy to choose the overall aims of the society, but they do not choose the means to achieve them, nor do they negotiate the prerequisite compromises of collective decision-making. They have “neither the expertise nor the time to concern themselves with the complex tasks of compromise and implementation” (Christiano 1996: 207). It is the role of representatives, seen here as specialists in a political division of labor, to act as trustees when it comes to dealing with the means. However, they are mere delegates when it comes to the overall aims of the society; the representatives have to follow the citizens’ wishes expressed in elections. To do otherwise, to choose the aims or change them as they see fit would be to abrogate “citizens’ authority and undermine the political equality of citizens” (Christiano 1996: 216)<sup>22</sup>.

The problem with this solution is that there is no principal way how to distinguish between means and aims – the very distinction is politically contentious and subject to potential negotiations and compromises. But even if they were somehow recognizable, they can never remain quite so clear-cut and never predictable. Not only can particular aims be turned into means – bargaining chips to be either pulled out or set aside as political expediency may dictate – or vice versa means into aims – when procedural questions become sources of political upheaval (for example, the US Senate filibuster rules), but aims can be put forward or simply become relevant suddenly, despite never being expressly considered in elections.

Andrew Rehfeld (2005), in his quest to identify the ideal constituency, put forward five limiting conditions on any ‘plausible theory of legitimate political representation’. These are four broadly

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<sup>22</sup> Christiano maintains this distinction even in his more recent work (Christiano 2008: 104-105).

conceived procedural limiting conditions and one substantive. A political representative to be legitimate, has to be 1) selected via *appropriate decision rules* (e.g. majority rule vs ‘the smartest decide’), 2) which employ appropriate weighing of votes (equal vs qualified); 3) *properly authorized* by those he or she represents and 4) be *properly held to account* by some or all the same people whom he or she represents. Finally, 5) the representative must act in accordance with *appropriate substantive aims* (advancing interests of voters vs. own interests). These limiting conditions on legitimate representation in the sense that they serve as firm guidepost which any theory would have to account for and any exception would have to be explained (Rehfeld 2005: 181-182).

These conditionals follow Pitkin’s conception except for a minor but significant distinction. Rehfeld emphasizes that a failure to meet one or more of these limiting conditions means only that the representative fails to be legitimate – for example an elected MP who uses his office for personal gain and ignores the interests of his voters fails to perform his duties, but that would hardly mean he is not a representative. For Pitkin, however, a failure on any of these conditions would mean a failure to be a representative *tout court*. Rehfeld here makes a point that it is a conceptual error to mix representation and legitimacy, for him representation is a purely audience-dependent phenomenon which carries no necessary democratic connotations (Rehfeld 2005: 184-185; also Rehfeld 2006).

Pitkin’s representative then comes loaded with normative expectations, but I do not believe this detracts from her contribution. It only requires us to remember that hers is not a theory of a general political representation, but an important contribution to a particular – democratic representation. This distinction also warrants a further clarification on my part. When talking about experts as potential political representatives, I also mean only the representatives in the democratic sense, what Rehfeld would call legitimate representatives. Since in my overall project I am interested in reconciling expertise with procedurally fair democratic practices, I am concerned here only with representation purely in its democratic forms (but cf. Rehfeld 2006).

### 3.2.3 The Importance of Pitkin

What then is Pitkin's solution to defining political representation? In order to 'stand in' for someone and act on their behalf and on behalf of their interests, the representative needs to act "in a manner responsive" to the represented (Pitkin 1972: 209). But the act of representing must not simply promote and follow the interests of the represented, the represented must have their 'presence' felt, which Pitkin allows for by having the represented be able to object to what's done in their name:

The substance of the activity of representing seems to consist in promoting the interest of the represented, in a context where the latter is conceived as capable of action and judgment, but in such a way that he does not object to what is done in his name. *What* the representative does must be in his principal's interest, but *the way* he does it must be responsive to the principal's wishes. He need not actually and literally act in response [...] but the wishes must be potentially there and potentially relevant. (Pitkin 1972: 155)

The responsiveness works as a negative criterion – the conflict "must be possible and yet nevertheless not occur" (Pitkin 1972: 155). Runciman (2007) calls this the "non-objection criterion", one that allows for this latent presence of the represented. Without this potential to bear the consequences and be in some sense present in the representatives' actions, it would be merely acting on one's behalf, like a parent does on behalf of his child, where no actual representation takes place (Runciman 2007: 95-96).

Plotke believes Pitkin's initial definition of representation, where we are "making present *in some sense* of something which is nevertheless *not* present literally or in fact" (Pitkin 1972: 8-9) might be slightly misleading, because by stressing the duality of presence/absence it "downplays the *relational* and *abstract* elements of political representation" of standing in for someone "*in a relation of mutual interest*" (Plotke 1997: 27; emphasis in the original). For Plotke the key element of political representation is the relation between both, the represented and the representatives. And so while the representative may have a great deal of leeway in choosing how to act based on his own



judgment as a responsible agent, the preferences of the represented persons are in need of being interpreted and “making them clear requires dialogue” and “communication between them” (Plotke 1997: 29-30).

But for Pitkin herself representation was never meant as static, she would probably agree with Plotke on the relational aspect of representation, but she went even further. According to Pitkin, representation is best understood as a public, institutional arrangement where the constant conditions of responsiveness are present. Her view is a systemic one, where representation equals institutional machinery always ready for expressing the wishes of the represented (Pitkin 1972: 221-22). Importantly, even though she defines this relation in terms of responsiveness (the aforementioned presence of ‘a constant condition of responsiveness’), she does not refer to some voter-representative congruence of preferences, hers is not a principal-agent model. Representation is not a single action but a distributed institutional effect, the overall structuring and working of the political system. Furthermore, this responsiveness needs to be only potential; there must be open access to power rather than its actual exercise. This makes representative democracy compatible with elite leadership, but incompatible with manipulation or coercion. (Pitkin 1972: 233) Of course, only certain institutional arrangements will satisfy this requirement of systemic long-term responsiveness which means that those previously dismissed empty formalistic and descriptive views will become relevant again.

At this point I would like to emphasize why Pitkin’s account remains relevant today. It is not only because it continues to directly inspire a current revival of theorizing on political representation, as we shall see below, but also because it has both the potential to contribute to developments in normative democratic theory and remains in tune with current empirical research.

Iris Marion Young (2000) proposed distinguishing two models of democracy, two ideal types based on the dominant process of decision making: *aggregative* and *deliberative* democracy. On the aggregative model democracy is simply a process through which preferences for rules and officials

are expressed, challenged and counted through a fair and reliable method. Elections simply reflect the aggregation of the strongest and most widely held preferences. Representative democracy is conceived here as a continuous responsiveness of the government to expressed citizen preferences. The preferences are treated as a given, there is no accounting for their origin, nature, or motives behind them; they are exogenous to the political process<sup>23</sup>.

The normative expectation seems to be of a two-step process within which citizens first seek to clarify their own positions and aims (independent from elite cues or frames) and then select representatives who will produce desirable results. Mansbridge (2003) called this traditional model *promissory* representation, where competitors for elected office make promises to their potential constituents and are judged based on how they have kept them<sup>24</sup>. Representatives are supposed to “listen to these public discussions and diverse claims” (Young 2000: 132) and heed the interests of citizens, which should count as a “starting point” of any democratic view of representation: the interests of citizens, their clear and straightforward communication, are needed for the representation to have its active and relational elements (Plotke 1997: 32). Representation under the aggregative model requires that the democratic representation be an unidirectional process, where voter preferences inform the representatives – Disch calls this the ‘bedrock norm’ of political representation. Here preferences form the basis for political action and political representation is seen as a “linear and dyadic” process, where “legitimacy turns on voters and representatives being oriented in the proper direction” (Disch 2011: 1).

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<sup>23</sup> If democracy is viewed simply as a mechanism for aggregating private interests – and the citizens are never required to truly interact with each other – then there is no distinct conception of the public. Consequently, Young argues (2000: 21), legitimacy suffers since there is no need to defend these private preferences with reasons acceptable to others and no possibility to make normative evaluations of these preferences. Therefore she suggests the deliberative model as normatively more appealing.

<sup>24</sup> Mansbridge (2003) also suggested we add three more models: *anticipatory*, *gyroscopic* and *surrogate* representatives, which are more interactive and reflexive than the promissory account. But as Mansbridge notes, they still fail to meet the standard criteria of traditional democratic accountability.

However, the latest empirical research suggests that political preference formation is intrinsically enmeshed in the process of politics – it does not come prior to it. The process by which voters form their opinions and preferences depends to a large degree on the communication put forward by the political elites (Chong & Druckman 2007, Druckman & Nelson 2003, Levendusky 2009) but also that the elite frames in competitive democracies depend more on their ‘quality’ than their frequency or dissemination (Chong & Druckman 2007). With regards to their information and opinions citizens in large modern societies depend to a large extent on “persons who devote themselves full time to some aspect of politics or public affairs”, i.e. political elites, who can be either “politicians, higher-level government officials, journalists, some activists, and many kinds of experts and policy specialists” (Zaller 1992: 6). We might therefore be concerned about the extent to which the public gets a choice about the frames of reference offered by the elites, whether they can choose between alternative visions, or simply follow the elite consensus.

In contrast, deliberative democracy seems to account for some elite influence – it allows elites to shape constituent preferences – as long as it is done within “mutual education, communication, and influence” and not manipulation (Mansbridge 2003). The deliberative model expects preferences to be formed in interaction. Democracy is not only about expressing preferences, but also about shaping them through discussion. This model, explains Young (2000: 26), “conceptualizes the process of democratic discussion as not merely expressing and registering, but as *transforming* the preferences, interests, beliefs, and judgments of participants”. Deliberative democrats recognize “that interests are not fixed prior to politics, [but] they make them endogenous to politics in an idealized way: they are formed by practices of public reason to secure the independence and autonomy of citizens’ judgment against the opportunistic communication of the elites” (Disch 2011: 6).

However, there is still somewhat of a gap between the normative expectations of how citizens reason and arrive at their preferences and how this actually occurs in real life (Disch 2011: 5). The

same research on opinion formation and political psychology also suggests the preferences emerge in the context of interparty competition and are responsive to elite communications. Most of political talk is “crafted talk”, not really deceiving or intentionally misleading, but not entirely straightforward either – it is focus-group tested, polled, designed for mass potential appeal. Political discourse forms stable and coherent preferences, it serves to inform potential voters and to recruit them into a winning majority. But these communications are deployed by self-interested elites in pursuit of competitive goals - relying on party cues avoids arbitrary information but also exposes them to the risk of manipulation (Disch 2011). Real world politics is much akin to a dynamic discovery process where the political entrepreneur not only caters to the demands, but actively shapes them through his offer. As it actually exists “democratic political representation neither simply reflects nor transmits demands; it creates them as it actively recruits constituencies” (Disch 2011: 3).

Lisa Disch, who has recently advanced a forceful argument for Pitkin’s continued relevance for modern political theorizing (Disch 2011, 2012), has also seized upon Pitkin’s suggestion of representation as a systemic view and developed a *mobilization view* of representation. Here, representation is an activity that draws constituencies together – although it does not invent them wholesale, it does give them a unity which did not exist pre-politically. In this sense, as we shall see below, representation is presented as *constitutive*, the people and their identities, their political differences must be first convincingly narrated into being, given a shared problem, a singular perspective, a shared goal, a common enemy. Of course, some representative frames are more inviting, more prone to success – after all, the intended audience lives at a particular time and has certain cultural-dependent value commitments – but there are no certainties that a particular competitive rhetorical formation of social differences will be politically successful.

As Pitkin made clear, representation requires the potential to object, the contestability of political decision-making. This remains a given, but Disch emphasizes that representation also facilitates the formation of social differences, it does not merely reflect them, but makes them real and present.

Political identities emerge not from *real* social divisions but are ‘mobilized’ into existence by the competitive discourse of political elites. In this sense her view accommodates the sociological realities of modern democracies, allows for rhetoric and for the possibility of elites to influence and persuade the public without triggering automatic normative backlash. Disch suggested “reflexivity” as a normative standard for assessing representation – “a systemic capacity” intended as “the measure according to which a representation process can be judged as more or less democratic insofar as it does more or less to mobilize both express and implicit objections from the represented” (Disch 2011: 12). For reflexivity to be meaningful it would need to encourage contestation at all points of the representative process. This means not only formal and informal means of communication, initiatives and protests, the competition of media, advocacy groups, and political opinion shapers mitigating the passive absorption of elite communications, but also a mechanism through which representatives would have “structured ways of taking objections into account” (2011: 12).

### **3.3 Experts and Representatives**

#### **3.3.1 The Representative Turn**

With the recent upsurge of theorizing about representative democracy (Alonso et al 2011, Ankersmit 2002, Shapiro et al 2009, Urbinati 2006, Urbinati and Warren 2008, Vieira & Runciman 2008, Williams 1998, Young 2000) there have been a host of studies looking into the possibility of expanding our notion of political representation and even the possibility of adopting other, more opportune models for it (Disch 2011, Dovi 2007, Mansbridge 2003, 2009, 2011, Rehfeld 2005, 2006, 2009, 2011, Saward 2006, 2009, & 2010, Severs 2010, 2012, Taylor 2010). The resurgence of representation theorizing owes much to the reality of modern pluralistic politics, where less and less depends solely on the electoral cycles and more on other, more informal venues of representation, motivated by concerns over fairness and design of constituencies, inclusion of minorities or other groups, or dynamic policy consultations (cf. Urbinati & Warren 2008 for an overview). The emphasis of some of these studies

seems to lie less with representation of citizens and more with representation of particular groups (Williams 1998, Mansbridge 1999), or even inanimate constructs, such as the environment (Eckersley 2011), or ‘discourses’ (Dryzek & Niemeyer 2008). It is also fundamentally connected with the varied successes and failures representative democracies had in representing various oppressed minorities, the general dissatisfaction with democratic processes felt in many advanced democracies, as well as the rise of both domestic and supra-national governmental and non-governmental organizations operating without any clearly ascertainable modes of accountability (cf. Grant & Keohane 2005, Kuper 2004). In some sense “[i]t is no longer self-evident who speaks for whom, and by what authority” (Näsström 2011: 501).

Näsström (2011) identified three key theses of this “representative turn”: firstly, the move away from focusing on the will of the people toward emphasizing the importance of judgment, i.e. a move away from decisional to deliberative aspect of politics. This means a more attentive consideration of how public discussion is carried out and how exactly the will of the people materializes. At the same time it raises questions about who makes the final decisions and whether this emphasis on deliberative practices does not abandon some crucial elements of mass democracy (cf. Chambers 2009).

Secondly, there is the rising emphasis on representation as being a constitutive mechanism instead of simply a constitutional one – the focus is on the societal realm, moving away from institutional aspects, electoral mechanisms and towards “what representation does, ... the effects of its invocation ... its dynamic character” (Saward 2010: 4). Theorists of representation are increasingly stressing that democratic constituency exists “at best potentially” and only “the representative institutions and the process of authorization themselves call its members into action” (Young 2000: 130). Citizens, the people themselves, are “endogenous to the process of representation” and it is “only *through* representation that a people comes to be as a political agent, one capable of putting forward a demand” (Disch 2011: 5). Democratic politics is “*constituted* ... through representation.

Representation is constructive, producing knowledge, the capacity to share insights, and the ability to reach difficult agreements. It entails a capacity for recognizing social relations in order to consider changing them” (Plotke 1997: 31).

Constituencies are no longer represented, but created by representation, rendered present by someone, who claims to represent them. The view of the representatives is *decentralized* and no longer associated only with people in government, but with anyone broadly *in politics*, be they NGOs, celebrities or spokespersons for various campaigns. The decentralization goes to a point where the constitutive thesis “destabilizes the traditional distinction between participatory and representative politics” and makes it as if we were all representatives now “presenting ourselves in public and so partaking in the creation of constituencies to which we belong” (Näsström 2011: 507).

According to Bourdieu (1991), the essence of real political work is in this constituting of constituencies, making of representations. He also recognized the symbolic action of representation to be circular and mutually dependent: it is because the representative exists, because the ‘spokesperson’ (creates) represents the group, that the group is represented and symbolized into existence – and in return it gives existence to the representative as its true representative (Bourdieu 1991: 204). Of course, for Bourdieu this means there is always a potential for some “usurpatory ventriloquism” where the representative speaks for something which he brought into existence by his very utterances, and tricking his audience that he is “a simple symbolic substitute” for the people, the working classes, the working masses, the nation, or whoever (Bourdieu 1991: 211-212).

However, some people’s actions do and will matter more, so this raises a question how this constitutive view can guarantee that at the claim-making constitutive moment, which turns into a dynamic ongoing process, there will be any political equality on which we can fall back. As Näsström poignantly asks, “How can we make sure that money, status, gender, race and access to time do not create inequalities among the makers of politics, and insofar as they do, can be detected and judged as such?” (Näsström 2011: 507). The role of the representatives seems to loom larger here than that

of the represented, with the danger being that we move to a very Burkean view under which “voting, counting of noses in Parliament, is of no importance; what is required is that all facts and arguments be accurately and wisely set forth” (Pitkin 1972: 188).

In fact, and thirdly, the “representative turn” writers also emphasize the importance of recognizing that representation can be non-electoral just as well as electoral. This turn towards the non-electoral follows from the logic of Pitkin’s original writing, which emphasized the systemic, socially embedded nature of representation, but it is also somewhat more peculiar. Why emphasize this non-electoral aspect of representation? What does it mean to separate representation from democracy in this way? What is “the point of pointing this out” (Näsström 2011: 508)? There is a real concern that without a clearly defined and established equality, the powerful actors will have a free rein in voicing their interests, whereas the stakeholders, on behalf of whom the representatives proclaim themselves, will be short-changed, without means of effectively controlling these representatives and outside any institutionalized context.

### ***3.3.2 Expertise and Representative Claim-making***

This representative turn and the systemic view of representation it espouses has a clear precursor in Pitkin’s writing, but Pitkin never lost sight of the importance of proper institutional moorings of representation, the form for the substance. No representation would be possible without proper institutionalization. And though Pitkin remains adamant in stressing that no particular institution can guarantee the essence of substantive representation<sup>25</sup>, she also reminds us it is the institutional forms that flesh out the abstract ideals (1972: 239). Accepting Pitkin’s conceptualization of a representation as broadly systemic does not necessarily commit us to the conclusions others have drawn from it. I believe that the question of expertise can serve as a useful test case, which will

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<sup>25</sup> “[W]e can never allow institutions, habits of conduct, the behavior of representatives, to become our standard and ideal. Whether the governments we conventionally call ‘representative’ involve genuine representations always remains open to question.” (Pitkin 1972: 239-240)



demonstrate the limits of representation construed as an all-encompassing rhetorical category and stress the importance of some sort of formalist requirements for a theory of political representation.

Pitkin was probably correct when she insisted that representation should be conceived primarily as a “public, institutionalized arrangement involving many people and groups”, where representation is not based on “any single action by any one participant, but the overall structure and functioning of the system, the patterns emerging from the multiple activities of many people” (Pitkin 1972: 221-222). Similarly, Nadia Urbinati (2006) understands representation as “a form of political process that is structured in terms of the circularity between institutions and society, and is not confined to deliberation and decision in the assembly. [...] The multiple sources of information and the varied forms of communication and influence [...] set the tone of representation in a democratic society by *making the social political*. They are constitutive components of representation, not accessories” (Urbinati 2006: 24; emphasis in the original). Representation draws a constituency together, it does not simply reflect the society and its differences, it helps to constitute these differences and “mobilize” them (Disch 2011: 8). But this process is not confined only to the electoral representative assembly. Urbinati notes that not all representation need be tied only to electoral processes, but believes that even though “elections ‘make’ representation, [...] they don’t ‘make’ representatives”.<sup>26</sup> Elections themselves are key since they make possible a “responsible and limited government”, they do not on their own ‘make’ “representative government” as such (Urbinati 2006: 224). Simply put, representation needs to be seen as an iterative, dynamic process, and not necessarily something cloistered by election dates.

It is this dynamic, socially mobilizing aspect of political representation which was also seized by Saward’s conception of a “representative claim” (2006, 2009, 2010). Michael Saward believes that it is a mistake to consider political representation “as occurring only in and around the parliamentary

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<sup>26</sup> Again, I am sympathetic to this systemic view, which is sensitive to the overall performance of the representative system, but I think Urbinati has it exactly backwards here: elections themselves don’t make representation, but they *do* make representatives.

bodies and procedures” and to confine our investigations to standard models of elective and parliamentary representation limits our insights and does not “sufficiently take into account the variety of representative claims or contexts that are non-elective” (Saward 2010: 30-31).

Saward’s conception of representation is less concerned with the traditional ‘making something present that is literally absent’, but more about “*rendering* of such claims of presence”. What is crucial in understanding political representation is how “the *impression* of presence [is] constructed, defended, and contested” (2010: 39). He wants to avoid stipulating in what particular institutions representation is embodied, because for him representation is not a ‘presence’ but an ‘event’: “It is not the fact, not the unalloyed presence, of representation that ought to be asserted, but rather representation as a set of practices, of events – and in particular of *claims*, claims to be representative” (2010: 39). Representation is an ongoing, dynamic process in which a great variety of actors and organizations take part, electoral actors through elective processes and other actors through other processes. Representation is a process of claim-making rather than a fact established by institutional election or selection; or at least, it can be the latter by virtue of being the former (Saward 2010: 44).

Importantly, Saward distinguishes several types of non-electoral representative claims (2010: 95) and one of them is the claim of ‘expertise and social credentials’. Experts might be seen as representatives, if they make a claim based on their authoritative knowledge arising from some specialist expertise, which may allow them to come up with distinctive insights about some potentially neglected groups or interests. Of course, how these claims will be accepted or viewed depends very much on the presence of some interpretative community; the appropriate audience of other recognized experts and their institutionalized bodies (Saward 2010: 98). This means that experts – or some expert body – can come forward and issue a *claim* that given their credentials they represent the interests of citizens in some respect. For example, an environmental protection agency may represent the “environment” or the citizens’ interest in it; a medical association may represent

the public interest in having a regulated body of doctors adhering to widely agreed standards; a bioethics council represents the public interest in regulating genetic research; and the Federal Reserve may represent the “economy”, the “markets” or all citizens qua consumers in ensuring a stable economy and averting (further) economic crises.

Expertise can be thus seen as a discursive strategy of legitimation – it explains why a certain action is required or desirable. It does not necessarily matter whether the expert body itself is elected or even internally democratic as long as it operates within broadly democratic system and context – it is the quality of the whole representative system that matters. The representative claimant should be “locked into” a dense network of an organizational or other ties (Saward 2010: 105). What is needed then is a *systemic assurance* of contestation and the ability to fulfill Pitkin’s non-objection criterion.

The principle problem with Saward’s representative claim-making is that it does not account for responsiveness. Saward implies the necessity of democratic legitimacy for the overall scheme within which the claims are made, however this does not satisfactorily answer the question how to differentiate, for example, “between symbolic and policy responsiveness, or between instances of ‘feeling represented’ from actually having one’s interests represented” (Severs 2010: 416). Whereas Pitkin required (potentially) real responsiveness, Saward’s claim-making is so all-encompassing that any communication claiming to speak for someone qualifies as representation. Without some sort of a formalized feedback-loop mechanism (e.g. elections) that would make responsiveness a real potentiality this simply means that any PR communication becomes representation if it finds an ‘audience’.

We do need rhetoric in politics, it is a legitimate instrument of persuasion and we also need expert input that will guarantee the policies will reach their desired outcome. But we can also see that when making a representative claim, or even when framing the political discourse representatives can be open to challenge of manipulation, either in framing of the issues or preference misrepresentation, or as Bourdieu (1991: 211) would have it, ‘usurpatory ventriloquism’. The danger of such a

usurpatory ventriloquism is especially relevant with experts, when they are treated as political representatives.

Furthermore, it remains to be seen what this repurposing of the concept of representation can actually achieve. Let us look at the three aforementioned examples of expertise, of course not at all exhaustive of all potential instances of expert-political relations, to see how the concept of representation can help to illuminate the problem: first we can look at experts who have been granted definitional power in their domain by the state: such as forensic science experts, secondly we can look at economists at central banks or various regulatory agencies who have been delegated with specific roles, and finally, we can look at climate scientists as they are making their deliberative input.

It is rhetorically possible to see all three as in some sense ‘representative’, the question is how would this conceptual reframing help explain away the problems connected with experts and their relationship with democracy. The forensic scientist can be said to *represent* the victims in violent crimes, to represent the truth, the pure facts of an action brought in front of the court. Similarly, central bankers might be said to *represent* the interests of all citizens worrying about inflation, economic growth and prosperity, or they can represent *the economy*. Finally, the global community of climate scientists making warnings about the ongoing, deleterious climate change wrought by man’s economic activity can be said to at once represent the interests of nature, the environment, the future of human survival, etc. However, the relationship between climate science and democratic politics, already fraught with contentions and misunderstandings, is not helped one bit by such rhetorical exuberance, and neither can the worries about the accountability of central bankers or forensic technicians be assuaged by simply re-labeling them.

### **3.3.3 Experts as Representatives?**

Moving beyond the simple rhetoric, can experts *stand* as representatives in any of the instances above, conceptually? Does it make sense? A representative government is one which has a ‘constant

condition of responsiveness', one that has institutional arrangements in place that make it possible and ready to respond to potential wishes of the citizens: "Only if it seems right to attribute governmental action to the people in the substantive sense do we speak of representative government" (Pitkin 1972: 233). This is less impressionistic than it seems, it is not based on any single action at any particular moment which happens to be popular or desired, but it depends on the "long-term systematic arrangements" of institutions. In an important sense this would be impossible without elections.

It is here where the formalistic view of representation has to play an important role. Though, as we have seen above, viewing representation only through the prism of authorization or accountability is insufficient for a working definition of political representation (Pitkin 1972: 38-59), they are very important for conceptual delimitation (Pitkin 1972: 234). If we do not want to risk conceptual stretching and succumb to the erroneous view where everyone (and thus no one) can be a representative, we need clear borders beyond which the concept does not operate. Thus authorization and accountability become relevant in defining and delineating the institutional requirements of a representative system. For anyone to be a political representative, we require a straightforward and identifiable way for her to be authorized for her role and for her to be potentially held to account and made responsive. Without clear guarantees of political equality we can never really say that everybody is being represented equally, that everybody's interests are being taken care of and no one is marginalized. Without clear authorization, vesting of public authority, we miss an important normative link between the actions of the represented and the representative.

However, experts are authorized along different lines – they become experts by specializing, 'enculturing' themselves and interacting within a community of experts. They get recognized as experts based on their various credentials, their proven track record, and their experience. One becomes an expert by doing expert stuff and being recognized for this by his fellow experts (Goldman 2001; Collins & Evans 2007, Anderson 2011). Successful recognition of experts requires a specialist

tacit knowledge that is simply not accessible to everyone. The avenue of authorizing experts by popular recognition is simply not available to us.

Similarly, we do not want experts to be responsive to popular pressure and public whims – and even less so than the parliamentary representatives. If experts qua representatives were supposed to stand for all citizens it would require responsiveness at some level – this need not necessarily imply taking direct instructions, but it does suggest openness to public pressures that can delegitimize their very expertise by some folk wisdom<sup>27</sup>. We feel there are good reasons why we want the experts to be insulated from public pressures. This does not imply some ivory tower isolation, we certainly want some level of public oversight and control, but a direct and institutionalized responsiveness to the wishes of the citizenry might be in direct contradiction with their best interests.

Mark Brown (2009) offers a more nuanced view on the relation of democratic representation and scientific expertise. Building on the ‘representative turn’ writing, he attempts to ground scientific expertise within the system of political representation. Following Pitkin, he also emphasizes the systemic concept of representation that can include various elements and different “institutional and non-institutional venues [which] make different contributions to representative democracy” (Brown 2009: 205).

Brown believes the best reply to the problem of politicized science is to democratize it through various institutional mechanisms implied by democratic representation. These mechanisms can, for example, include deliberative ‘mini-publics’, or government advisory councils. He differentiates five elements of democratic representation, ‘different modes of relation between representatives and constituents’: *authorization, accountability, participation, deliberation, and resemblance*. Of course, not every institution in a representative system can be expected to fulfill the same standards to the

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<sup>27</sup> This does not imply that there is nothing to be gained from interaction with wider public – underappreciated or unknown types of expertise can be recovered. Wynne’s (1992) aforementioned case of the Cumbrian sheep farmers and their localized expertise, which proved more accurate than that of specialized radiation experts, is instructive here.

same degree along all five of these modes of representation, some institutions will be able to facilitate only several of them but should be “weighted differently according to the purpose of the institutions” (Brown 2009: 206). At the same time for this reason it is important that “citizens should have access to a range of different types of association, and hence to a range of different modes of representation” (Brown 2009: 203).

The first one, authorization, is a strictly formal element of representation, it is the required link that allows the citizens to truly ‘own’ their decisions, that is treat the legally binding decisions reached by the government as their own. Democratic legislatures are authorized through elections, members of cabinets, courts, advisory boards, and bureaucrats are authorized by being appointed directly or indirectly through the chain of delegation by the legislature. At the same time, many of these appointees, notes Brown, will not only be *in* authority, but also *an* authority in some area (Brown 2009: 212). We have previously discussed the expert authority, suffice is to remind here, that their authority is derived from authoritative epistemic procedures, credentials, and engagement with the expert community (cf. Anderson 2011). These two types of authority may both be cultural-specific and intertwined but they mobilize distinct capacities: legitimate coercion and reliable knowledge. The expertise of those who are *an* authority only gives them the authority to make informed pronouncements on the relevant topic and enrich the deliberations by *representing* particular perspectives (e.g. the nature, the climate, health of the general public etc.), however it does not authorize them to act on behalf of those who recognize their brand of authority. They “do not represent in the sense of acting on behalf of others” and democratic representation requires them to limit themselves only to an advisory role (Brown 2009: 214).

When it comes to accountability, experts are again limited to the less formal aspects of it. In their delegated role of a public authority on a relevant topic they can be accountable only in the deliberative sense of ‘giving account’ (Brown 2009: 216). Experts, especially those working with public grants or in publicly sensitive areas should be able to give account of their work and be open

to scrutiny, but they cannot be held to account by the general public the same way the elected public officials are.

The final three elements demonstrate it is important for the representativeness of the political system that it allows for wide avenues of public participation, even in areas of technological and scientific governance. Elements of deliberation, participation and resemblance stress the importance of lay public's involvement if the overall representativeness of the system is to be maintained. In the end, democratic representation will depend on the "ecology of institutions to which they have access" (Brown 2009: 237).

Deliberative mini-public, or consensus conferences (Smith 2009) can fill in the gap, they are the institutions which allow the lay public to engage the experts and their topics. They may lack the formal elements of authorization and accountability, but they compensate for them in the other three elements. The final element of resemblance, which is necessary for those who continually find themselves in a minority to be able to identify with the overall representative system (Brown 2009: 227-228), is supplied by the participation of the lay public, the non-expert 'just-like-us' citizens, who may query and advise the decision-making in a particularly thorny but complex topic.

However, what we end up with is mostly a repetition of the importance on public involvement and deliberation on issues of scientific governance – but this merely restates the original problem under the guise of political representation. Public scrutiny, participation and deliberation may have the potential to significantly lift some of the onus of skepticism and disbelief of the wider public towards its expert interlocutors co-deciding their common fate in certain questions, but it does not answer the central quandary: whether their expert status within decision-making does not violate the essence of democratic fairness.

Therefore, I believe Pitkin was essentially right, that it is a category mistake to insist that scientific experts are political representatives. Truly, an expert may *represent* an interest or an agenda before the public, an elected assembly or an administrative unit, just like a lobbyist represents an interest



group or a lawyer his client, but these are not strictly speaking political representatives, even though the context within which they operate might be (Pitkin 1972: 227): “But when we speak of political representation, we are almost always speaking of individuals acting in an institutionalized representative system, and it is the background of that system as a whole that their actions constitute representation, if they do” (Pitkin 1972: 225).

When experts become involved in democratic decision-making, argue for certain principles, decisions, agendas, *represent* certain interests, they do not become political representatives simply because they are engaged in politics. They do, however, become part of the democratic system of politics. When unelected people are institutionally granted power in some domain, it is important that a formalized contestation of their decisions is open to concerned citizens. Especially in the case of expert bodies wielding power to decide on matters of great complexity we need to have structured mechanisms in place that would allow the public to scrutinize their credentials and engage them in an open discussion that would explain why or how some decisions are necessary to be made.

The importance of such structured mechanism of procedural respect paid to concerned citizens will become apparent in the following chapters. But in order to proceed with the argument we need to explain what is actually at stake, when experts influence politics. The following chapter explains that what experts offer is an independent standard of correctness, better known as ‘truth’, which raises concerns about the subversion of procedural fairness in democracy. Once we accept that democracy needs to be judged by anything other than the fairness of its procedures, argue the critics of epistemic democracy, then we are on a dangerous path of subverting the legitimate self-government of the people. The truth, they suspect, will be inherently despotic, if it is to second-guess the democratic decisions of the people.

## 4. Democratic Epistemics: Making Truth Safe for Democracy

In recent years the democratic theory has seen an important development of the concept of epistemic democracy. On this epistemic interpretation, democratic mechanisms are valuable in part because of their ‘knowledge-producing’ potential (Cohen 1986; List and Goodin 2001; Anderson 2006; Estlund 2008, Landemore 2013). In the concise words of List and Goodin (2001: 277) epistemic democrats believe it is the aim of democracy to ‘track the truth’: “For them, democracy is more desirable than alternative forms of decision making because, and insofar as, it does that.”

On the standard account of epistemic democracy, the truth, which the democratic procedures are supposed to track, is independent from the procedures. There is, in the words of Cohen (1986: 34), “an independent standard of correct decisions – that is, an account of justice or of the common good that is independent of current consensus and the outcomes of votes.” In this regard it follows Goldman’s veritistic social epistemology with a concern for how social practices best promote or impede the acquisition of knowledge (Peter 2009: 111; Goldman 1999).

This chapter has a simple objective of introducing ‘truth’ as a notion that is not problematic for democracy. Firstly, two anxieties about truth in politics are addressed. Truth need not be feared, it does not involve despotic subversion of politics as Hannah Arendt (1967) so memorably suggested, nor does it mean experts would have a special claim on political authority. Secondly, the chapter defends the notion of truth as a political procedure-independent standard of correctness against proceduralist critique, paving the way in the subsequent chapters for my account of why experts as especially well-placed arbiters about the correctness of certain political decisions need not subvert self-government.

### 4.1 The Rule of Truth?

The notion of truth in democratic politics has been fraught with difficulty. The specter of truth has haunted politics at least since Plato and by allowing it in, the complaint goes, we subvert politics as such. When truth as an objective standard – truth without the relativist scare-quotes or the culture-

contextualizing cursive – comes into conflict with the results of democratic procedures, will siding with the standard not end politics of equality in participation and effectively enslave us to some abstract principle? How can we even reconcile the expectations of equal participation of citizens in politics, when the results of their engagement are subject to revision and approval by some standard existing outside of politics? Second, related worry is connected with the bearers of the specialized knowledge. Does not privileging truth also privilege those with better access to it? And if truth matters so much, why should we not listen exclusively to these experts, instead of all the debating and voting? Why not bestow political authority on the knowledgeable? These twin anxieties need to be dealt with if *truth* is to be made *safe for democracy* (Estlund 2008: 24).

The first unease has probably been best expressed by Hannah Arendt in her 1967 essay ‘Truth and Politics’. When she made her observation about the despotic character of truth in politics, she feared that any appeal to truth would preclude debate, which is „the very essence of political life“. Saying something is true, puts it beyond contestation, unimpeachable and undisputable, a notion deemed true would rule over us despotically. Of course, the truth Hannah Arendt feared was a philosophical truth, a normative statement, stating with an air of finality what justice and equality are, when issues like this rightly belong in the political realm, for citizens to be continuously persuaded and dissuaded about (Arendt 1967). Arendt, following Leibniz, for ‘convenience’s sake’, differentiated between *factual* truths about facts and events (particularly historical facts) which require protection and should never be allowed to be trivialized into a mere opinion – as actual despotic regimes are wont to do with uncomfortable realities – and *rational* truths of science and philosophy which could usurp the space of political debate. Any emphasis of a moral or scientific standard of correctness in politics would spell the end of lively debate. If politics is to be preserved as an arena of open disagreements, then we must guard ourselves from truths, since they coercively<sup>28</sup> mark the end of the debate.

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<sup>28</sup> For Arendt truth has an element of coercion, it despotically compels agreement, which is also why despots abhor it. They hate the competition (Arendt 1967: 54).

Factual truths concern everyday events and circumstances, which inform opinions, and as such are indispensable for politics. When recalling an anecdote about Clemenceau, who when asked what future historians might think about the causes of the Great War allegedly replied, that he does not know, but knows for sure they will not say *Belgium invaded Germany*, Arendt made a point about the importance of non-negotiable reality for a meaningful political debate. At the same time, she insisted the philosophical truths, once they enter the marketplace of ideas, become mere opinions, to be debated in light of various passions and interests (Arendt 1967:52).

Arendt's position is understandable given the experience of totalitarianism in 20<sup>th</sup> century. Her views of truth as coercive are likely contingent on this historical experience but nevertheless remain philosophically problematic. Her neat separation of factual and rational truths is mostly untenable: the factual cannot be divorced from the scientific; the facts are only facts insofar as they are part of a comprehensive theory, which, in turn, as we have already seen, cannot be fully separated from value judgments and claims. As Landemore notes, the accuracy of facts is not separable from the rational conditions of this accuracy (Landemore 2013: 225). Our knowledge of "the ground on which we stand and the sky that stretches above us" (Arendt 1967: 88) is dependent on the productive conditions that allow us to recognize them as facts. Moreover, the truth claims that we do make are nowhere near as absolute as to be *coercive*, they are probabilistic truth claims, put forward tentatively as the nearest approximation to reality, but always open to corrections.

The cost of denying the place of truth in politics might be even higher than Arendt and others would be willing to bear. The denial of the existence of an appropriate standard for judging political decisions, what Estlund terms *political nihilism* (2008: 25), would make any public debate about what ought to be politically done incoherent. Recourse to 'public good', 'justice', and 'equity' in discussions should be confusing for a political nihilist, because these presuppose that "the political process is under the authority of some higher normative standard" (Estlund 2008: 26). Only appeal to

pure procedural values would be permissible, but it remains doubtful whether such a ‘flight from substance’ can supply a normatively appealing account of politics (Estlund 2008: 65-97).

Furthermore, Landmore observes, there is a non-authoritarian way to make truth-claims. In any debate, the claims we make are tentative truth-claims, not just opinionated revelations of our interest. Politically relevant claims we make in a democratic context are made with expectation of “resonating” like truth in contact with the claims of others. Truth can be compelling, but it does not force itself on anyone, it is not coercive (Landmore 2013: 226). It is not truth itself which employs violence; it can remain an ideal in politics without our giving up on debate.

Arendt’s anxiety about truth needs to be differentiated from another, platonically more familiar one: the idea of expert guardianship as appropriate political authority. This is the notion that having access to truth gives one warrant to command authority over those who do not possess the truth. Plato’s original argument was qualitatively somewhat different – for him politics already was a matter of specialized knowledge – both technical and moral – so it *needed* to be placed in hands of the wise few, who, through birth and training, are uniquely positioned to rule prudently (cf. Reeve 2006). Today the fear might be that since the average man does not possess the skills or knowledge to govern, but at least understands enough to know how well he is governed (Pitkin 1972, Dahl 1989) we should reward those with better understanding by giving them greater weight in decision-making. The dark thought that might cross someone’s mind after some especially disaffecting election result would be: why not let the educated rule? If we can count some political outcomes as better than others and if we perceive some positions and policies as closer to truth, then why not let those more knowledgeable, more educated decide on the issues? If we could overcome the objection from potential bias and blatant self-interest, why not let the knowledgeable have the political authority? Why not epistocracy<sup>29</sup>?

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<sup>29</sup> The term *epistocracy* covers a form of government where the wise and the knowers rule (from the Greek *episteme* for knowledge).

David Estlund (2003, 2008) believes this to be a fallacy. Since it mistakenly considers experts to be bosses, giving the knowledgeable automatically the authority to decide, he terms it the *expert/boss fallacy* (2008: 22). The idea behind the expert/boss fallacy would move from *Expert E would rule better* to *Expert E is the rightful and legitimate ruler*. There seems to be a natural connection between the notions of knowledge and truth and the notion of authority. The idea that knowing entails the right to rule, that *knowledge is power*, has become a cliché even before Socrates drunk his hemlock (Estlund 2008: 30). Nevertheless it is an authoritarian position advocating elite rule that makes popular recurrences and that needs serious attention of epistemic democrats.

Estlund puts forward the epistocratic conception thusly:

1. The Truth Tenet: there are at least minimal true procedure-independent normative standards by which to judge political decisions.
2. The Knowledge Tenet: there are some (a few) people who know these standards better than others.
3. The Authority Tenet: the fact that some possess more normative political knowledge establishes that they have political authority over others. (Estlund 2008: 30)

In order to counter the epistocratic argument, Estlund considers the most suitable way is through denying the third, i.e. the authority tenet. It would seem hard to deny the truth tenet without succumbing to *political nihilism* (Estlund 2008: 25), and it would also seem implausible to deny the knowledge tenet, which only grants that some people might have a greater degree of (moral) political wisdom, something that does not necessarily threaten the moral equality of all persons (Estlund 2008: 32-33). In order to ground his later arguments, Estlund introduces the principle of *qualified acceptability requirement* which places a special burden of justification on relations of authority or legitimate coercive power (2008: 37). Under this principle if a proposed justification of a political arrangement is rejectable from any qualified point of view, the justification fails. This

principle is not biased in favour of democracy since it leaves open the possibility that other political arrangements might be justifiable from all qualified points of view (Estlund 2008: 38).

Probably one of the strongest cases for epistocracy was put forward, somewhat paradoxically, by the great 19<sup>th</sup> century liberal John Stuart Mill in his *Consideration on Representative Government* (1991 [1861]), where he argued for giving more votes to the educated. At the minimum, to be able to be citizens, people would be required to demonstrate they are qualified to pursue their interests intelligently<sup>30</sup> (Estlund 2003; cf. Dahl 1989: 125). By introducing this criterion of competence Mill argued that “the superior wisdom of an identifiable minority justified their having greater political authority” (Estlund 2003: 54).

Mill’s argument in favour of granting the educated weightier votes was partly driven by his concern over ‘class legislation’, where those of lower level of social rank and lower education, outnumber and outvote the educated. Secondly, Mill wanted to avoid giving equal influence without any consideration of merit and intelligence. Political institutions should embody the recognition that some opinions are more worthy than others (Estlund 2003: 57). But to be fair, as Rehfeld points out (2005: 179), Mill’s elitism was also of a progressive nature of sorts – he gave more weight to an exclusive group of the educated, but tried to encourage everyone to reach it. He wanted to avoid giving equal influence without any consideration of merit and intelligence. He wanted us “to recognize a potent instrument of mental improvement in the exercise of political franchises by manual laborers” (Mill 1991: 170).

It would be hard to deny that good education fosters the ability to weigh complex issues and make more informed decisions and that there potentially exists such a scholastic curriculum which would allow for wiser rule. And accepting that each citizen should have a vote, as part of showing them

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<sup>30</sup> Without a trustworthy system of general examination at hand Mill proposed the level of education to be accounted for indirectly – “two or more votes might be allowed to every person who exercise any of these superior functions” (Mill 1991: 183) – privileging the liberal professions and university graduates, who would be more likely to make better choices than the uneducated.

respect and allowing them to participate in the debate ensuring that a diversity of perspectives gets heard, why not allow Mill's literacy qualifications for voting and weighted votes of the educated in such a liberal framework?

Estlund bases his reply on the aforementioned *general acceptability condition* under which “political authority ought to be justified to the ruled in terms that are beyond qualified rejection” (2003: 59) In other, Rawlsian words, political justifications need to be acceptable to all reasonable citizens – Estlund here prefers the term (dis)qualified for dealing with grounds of accepting or rejecting a ruling arrangement – for it is more general and avoids any controversial ideas of what reasonableness might entail (Estlund 2008: 44).

Against this ‘Millian’ idea of the epistocracy of the educated Estlund raises what he calls the ‘demographic objection’:

The educated portion of the populace may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of education.  
(Estlund 2003: 62)

Even in an ideal society the pool of university applicants may display certain patterns that make them less than representative. Higher education may be statistically disproportionately sought by a certain class, race, ethnic group, gender, or creed, and even under maximum goodwill membership in such groups inevitable creates biases that end up damaging the quality of their collective decisions. (Estlund 2003: 62)<sup>31</sup>

The demographic objection works well against any literacy tests such as those that were employed in the American South before 1965 – they disproportionately disenfranchised the poor Southern blacks (Estlund 2003: 62-3). It can now be reasonably denied that under such conditions the educated are

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<sup>31</sup> It might be noted that this is actually a parallel reversal of the concern which animated Mill's argument – he was also wary of the epistemically damaging features that equal suffrage with a majority of uneducated might bring along.



able to rule more wisely – even though not all might agree – the epistocratic arrangement can no longer claim to be generally acceptable. Estlund anticipates a solution along the demographic lines – what if we tried to correct for any demographic pattern that might emerge by giving the disenfranchised group some extra votes as well: “it might yet be possible to select from the educated a subset in which those groups are properly represented” (2003: 63) in proportion to their real population.

But a doubter might further argue that other groups are over/under represented, and some of these groups may not be easily empirically identifiable. What if there are too many racists among the privileged? The fact that this *empirically latent* feature is not scrutinizable empirically does not necessarily disqualify the objection. In fact, on what grounds can we make judgments about such empirically latent features? Some may be more crazy than others, alleging that the privileged group may be more racist is perhaps more salient than alleging that the privileged group are all free masons or illuminati, but there simply might not be a general adequate ground for disqualifying them (Estlund 2003: 64).

Taking it a step further, the doubter need not even specifically suspect racism of the privileged group, but only that the demographically adjusted group might still possess a feature, which might travel with education, that would make their decisions epistemically distorted – Estlund calls them *conjectural features*. Such a feature may not be considered demographically relevant but still countervails the benefits of education by distorting the contribution to a wise political rule. Even if we tried to take a randomized sample from the overall educated population, which would control for any imaginable demographic sample error, there may still remain unknown and undiscovered sample biases – such biases make it possible to make a qualified objection to the overall minimal scheme of the rule of the educated and also to the epistocratic project (Estlund 2003: 64-65).

Thomas Christiano (2008) also rejected ‘unequal competence’ of citizens as an objection to democratic equality. A substantive test of competence would face a controversy from the start, since

there would be sharp disagreements as to what exactly constitutes ‘moral competence’ and what standards should be used to assess it (Christiano 2008: 119). In a sort-of Millian procedural test of competence (where we may need to distinguish between technical knowledge and moral knowledge) any educational criteria would still be controversial as they would presuppose some substantive conceptions of what is morally desirable; plus, anyone who actually goes through an education and receives comprehensive technical knowledge may have significantly different set of interests from all others (Christiano 2008: 120).

In his overall account Estlund made epistemic concerns part of the justification of political procedures and thus needed also to show why democracy is preferable to epistocracy. Democracy for him is epistemically the best political arrangement that also passes the qualified acceptability requirement<sup>32</sup>. However, Miller and Maloney (2009) challenged Estlund’s conclusions by positing that some political decisions are so important – for the well-being and survival of the polity – that in their making correctness trumps fairness. These decisions concern preventing ‘*primary bads*’<sup>33</sup> such as famine, war, economic or political collapse, epidemics and so on. All reasonable citizens would want to avoid cataclysmic ‘primary bads’, so if we presume that experts are epistemically better<sup>34</sup> at averting them, can citizens launch a legitimate complaint that it would not be entirely *fair* procedurally? Miller and Maloney (2009) do not think so: “Tolerating an unnecessary likelihood of cataclysm is all it takes to be unreasonable, to have one’s objection to a biased but reliable regime disqualified. Thus, any governance structure that is inferior when it comes to cataclysms is

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<sup>32</sup> Cf. Quong (2010) for a critique of Estlund and a revised argument against epistocracy.

<sup>33</sup> Estlund’s term for politically avoidable disasters (2008: 160 *passim*).

<sup>34</sup> Of course, individually experts are not infallible and may be prone to errors just as anyone, but when considered collectively it is most likely that “well-educated experts who belong to a community of fellow inquirers and embrace fallibilist, multivariable analyses can do a better job staving off cataclysms than the general populace. If this is true, we hope to prove that it would be unacceptable for democratic citizens to institute procedures that override these experts purely because they have the audacity to make invidious comparisons between classes of cataclysm-avoiders” (Miller and Maloney 2009: 56).

reasonably rejectable because anyone whose contributions are likely to count against such governance ought to be excluded” (2009: 58).

They use the example of Federal Reserve (FED) – or indeed any central bank, where expert economists conduct monetary policy, determine the availability of credit and influence to a large degree the economic growth, unemployment and inflation (Blinder 2010, Thatcher & Stone Sweet 2002, cf. McNamara 2002). The critics of FED, made recently notorious with the vocal emergence of the Tea Party movement (Skocpol & Williamson 2012), posit that it is ‘undemocratic’ or ‘unaccountable’, and also, based on the recruitment and education of FED experts, potentially very much systematically biased in favour of large banks. Indeed, FED relies on expert authority and makes decisions that influence coercively the daily lives of citizens, who have limited or no control or redress available to them. FED would thus seem to fail Estlund’s general acceptability requirement, yet we might suspect that if its policies were left to the discretion of congress “a cataclysmic primary bad” would follow (Miller and Maloney 2009: 55).

However, Miller & Maloney’s criticism of Estlund seems premature. When Estlund discusses what democracy knows and does, he does not distinguish between acts promulgated by popular vote and acts whose legitimacy and authority are derived from more broadly conceived delegation. The complaint that FED’s decision are not procedurally fair is incoherent since “regulatory decisions of an appointed agency are ... included” as democracy’s decision (Estlund 2008: 161). When democracies delegate and give priority to certain experts, they do so precisely so that they can create a structure in which the likelihood of a correct decision is increased. The expert agencies, such as FED, are created with the expectation of supplying the correct answer and pooling the wisest experts. Furthermore, the experts enjoy their epistemic authority not as some gifted individuals, but, as we have seen previously, as a community of experts structured in a certain way. The community of experts enjoys their authority insofar as it does not raise any one particular expert above all and by having open, publicly accessible discussions.

The importance of this aspect of the experts' position within democratic decision-making will become apparent in the following parts of the thesis. For now it is suffice to say that, contrary to popular worries, emphasizing truth in politics does not spell the birth of despotism, nor does it commit us to expert rule.

#### **4.2 Truth as a Standard of Correctness**

The epistemic argument for democracy rests on two important presuppositions: that at least some of the issues to be decided politically do have correct answers (i.e., that there is a procedure-independent standard of correctness); and that these correct answers or solutions can be at least approximated through the political decision-making mechanisms. This view is what Landmore terms 'political cognitivism' (2013: 208).

The second assumption is the bread and butter of the epistemic democracy accounts and it shall not be pursued here. Bryan Caplan has offered a standard critique of this assumption (2007), with Jason Brennan extending the argument to ethics of voting (2012) and even offering a moderate defense of epistocracy (2011), while robust defenses of the view have been supplied in Estlund (2008), Landmore (2013), Landmore and Elster (2012), Mackie (2003), to name a few. It is the first assumption – the existence of a standard of correctness on which to base a judgment of political decisions – which is important for the purposes of this work and which may also arouse suspicions.

It is imperative at this point to note that the standard of correctness can have varied forms. Landmore (2013) offers several important distinctions. First of all, the standard may be independent from the political procedures, but we can posit (to assuage multiple meta-ethical positions) that the standard can be either dependent on other contextual features: public values, cultural context and so on – or we can posit with the moral realists, that it is absolute and universal, stemming from some basic normative principles. This is the distinction between culturalist and absolutist political cognitivism (2013: 217-218).

Secondly, one can differentiate between weaker and stronger versions of political cognitivism. In the weaker, thinner version, the standard merely requires harm avoidance, the limitations of political mistakes, from the truly horrible, like decisions that lead to what Estlund called catastrophic ‘primary bads’, i.e. wars, famine, economic collapse and so on, to more innocuous but still harmful mistakes, such as enacting stringent immigration laws, or excessive economic regulation. A thicker, stronger version of political cognitivism then would define some outcome or a set of outcomes as desirable, i.e. the standard: robust economic growth, inflation under 3%, no public debt, decreasing poverty, diminishing mortality and so on (Landemore 2013: 211-213).

Finally, it is possible to differentiate the standard along the fact/value dichotomy. Although this particular dichotomy may be viewed as philosophically problematic, it remains analytically useful. We could adopt some version of moral realism and include normative principles into the standard. Or we could be less ambitious and merely stick to facts (Landemore 2013: 213-215). For purposes of this work at least, it makes sense to state that there are facts, politically relevant facts, whose correspondence to reality is empirically verifiable. One can remain agnostic about the correctness of value propositions and still maintain the possibility of there being a politically relevant objective standard of correctness. It should also be noted, that being an epistemic democrat and committed to the idea that democratic procedures are cognitively beneficial does not equally commit one to the claim that whatever arises from such procedures is automatically true. Democracy is arguably the best system for reliably tracking the truth – given democracies’ openness, free flow of ideas and the mechanisms enabling group rationality. But all the Condorcet juries of the world are not meant to say that groups are always more reliable than individuals, merely that they can and tend to be – and that political systems employing this are more reliable in tracking the truth than other viable alternatives (Coady 2012: 74).

According to Fabienne Peter, the problem with the standard conception of epistemic democracy is that “there is no feedback loop” (Peter 2009: 113). What should we do, knowing about the cognitive

features of democracy and its reliability in tracking the truth, with the persistence of disagreement after the voting has been done? Epistemic democracy, complains Peter, has no account for why some people, once a decision has been reached and the outcome is known, should change their minds. (Peter 2009, Anderson 2006). Peter finds the epistemic democrat's insistence on an independent standard of correctness inherently suspect, since it seems to separate democratic procedures and correctness of the outcomes, in a way that can illegitimately give precedence to the standard of correctness.

Similarly, Saffon and Urbinati (2013) defend 'proceduralist democracy' as the best normative vision of democratic politics. They differentiate it from three popular theories; epistemic, populist, and minimalistic accounts, all of which they find lacking in an important respect: all three, unlike their proceduralist account, fail to convincingly uphold the normative standard of equal political liberty. Populist theories of democracy are concerned with achieving 'unity of the people', the chief extrinsic and extra-political value for which even democratic political procedures and institutions can be 'overcome', being simply some transient obstacles on the road to the actualization of *the people*. On the other hand, the minimalists recognize the importance of political institutions and procedures for channeling social conflict, but they specifically fail to account for the normative value of the process to safeguard freedom. Finally, the epistemic democrats make democratic procedures subservient to a different value – truth. According to Saffon and Urbinati, when epistemic democrats, like Estlund and Landemore, impose a substantive standard other than equal liberty on democratic results they are potentially undermining both freedom and democracy (Saffon & Urbinati 2013: 42-45).

While there is much to agree with in their discussion of minimalist and populist accounts of democracy, Saffon and Urbinati's discussion of epistemic democracy paints a somewhat simplistic portrait of the account defended by Estlund and others. Democracy, they maintain, cannot have an external standard of correctness, since there is no one who can define the correctness of political decisions, apart from the very people and their representatives, who have made those decisions.

Democracy works as “a closed circuit, with no external reference point” (Saffon & Urbinati 2013: 48). When faced with the obvious necessity of having rights as an independent standard, Saffon and Urbinati insist that “rights that promote and protect equal freedom are necessary for democracy to operate adequately, and should be understood as intrinsic to it” (Saffon & Urbinati 2013: 44), though the reason how this might work remain opaque. At the same time, they insist that constitutionalism, i.e. the constitutional rules about procedures and rights, is not a part of democracy, but an external limit without which democracy cannot exist (Saffon & Urbinati 2013: 49). Realizing the flight from substance is impossible, this proceduralist critique of epistemic democracy wants to have its cake and eat it too.

Furthermore, as we have seen, epistemic democrats are well aware of the potential anti-democratic consequences, when we privilege the truth, defined outside of the fair democratic procedures. Blind insistence on truth could well lead us to consider expert opinion and decision-making – an epistocracy – to be preferable (Estlund 2008). In his conception Estlund moves away from the instrumentality of looking only at the epistemic quality of the results and instead proposes to focus *both* on the fairness and the ability of the procedures to track the correct outcomes. Yet, the role truth plays is supplementary: the intrinsic fairness comes as a first *sine qua none*; correctness is only the conditional second.

Fabienne Peter (2009) objects that even though Estlund’s proposal is better suited to respect individual citizen’s agency, it still operates with a standard of correctness that exists partly outside of the procedures themselves. Estlund treats procedural fairness and cognitive processes as ultimately separate. What Peter suggests instead, is that the “epistemic dimension may be rooted in a fair decision-making process” (Peter 2009: 116).

Following Rawls’s example in distinguishing between pure procedural justice and perfect and imperfect procedural justice, Peter draws a parallel and suggests a useful distinction between accounts of democratic legitimacy based on whether they “make reference to a desirable outcome

that is defined procedure-independently". A perfect proceduralism will posit that there is a procedure-independent criterion for judging outcomes and that the procedures can be designed to reach this ideal. An imperfect proceduralism also looks to an outside criterion, but doubts whether there is a procedure that can always guarantee the desired result. On Peter's account, a pure proceduralism account of democratic legitimacy would not make any reference to a criterion outside of the procedures themselves; whereas what Peter calls rational proceduralism (subsuming both the perfect and imperfect alternatives) will look at some criterion outside procedures themselves (Peter 2009: 66). Finally, she then applies this distinction on conceptions of epistemic democracy and differentiates between pure epistemic proceduralism and perfect and imperfect rational epistemic proceduralism (Peter 2009: 129). Thus, In Peter's taxonomy, Estlund's epistemic proceduralism would fall under the imperfect rational epistemic proceduralism, since it relies on procedure-independent standards of correctness in selecting the legitimate decision-making procedure that has the potential to approximate it the best (2009: 130). However, this supposedly underestimates the epistemic value of democratic procedures themselves.

Peter espouses the pure epistemic proceduralist view of democracy as an alternative to the standard rational proceduralist account, which treats truth as an independent standard. In her account, Peter (2009) relies on a proceduralist social epistemology, which emphasizes knowledge production as inherently social because "it is embedded in practices that are shaped by the interactions among epistemic subjects and the background assumptions that facilitate these interactions" (Peter 2009: 122). According to this view the epistemic value resides in the process itself, it eschews some procedure-independent standard for judging the right outcome. The content of knowledge or what is considered true is dependent on the appropriateness of the procedure: it has to be open to public, open to criticism, with recognized standards of evaluating propositions and guaranteeing equality of participants (Peter 2009: 123-124). Peter's pure epistemic proceduralism requires "public deliberation among members of the democratic constituency under conditions of political equality



and epistemic fairness”, meaning it supplements conditions of political fairness with epistemic fairness (Peter 2009: 132).

Peter believes the correctness to be difficult if not impossible to determine, and as such it is subject to socially and historically conditioned fallible judgments. Therefore, as a procedure-independent criterion it will remain elusive, correctness has to be developed inside the procedural practices – with all the potential biases being not things to be overcome, but as a resource, part of the knowledge-generating discussion. Peter here relies on Young’s (2000) assertion that difference is not something to be eliminated, but something to be used as a resource in discussion. Only in an open discussion can biased assumptions come forward, be unveiled, addressed properly, contested and used as a resource for knowledge production (Peter 2009: 134-135).

The main problem with epistemic proceduralism – as espoused by Peter – is that it treats justification as basically disconnected from truth in a relativist fashion. It is not clear how to treat and judge the procedures as rational or determinate. A properly proceduralist account would allow a group of discussants to reach an interpersonal consistency, however this might still be miles away from anything approaching reality. It seems suitable for normative discussions, or “procedural approach of egalitarian reciprocity ... restricted to practical discourse”, however, mostly unsuitable for anything involving hard facts. Of course, hard facts do not entail a complete divorce from normative issues and value judgments; however, neither can we completely disassociate the normative judgments from the reality out there: “It does not address the general question of how to assess the expertise or competence of others, but simply adopts subjectively chosen assessments as givens. So it is really a proposal for a specific inferential practice, not a general framework for social epistemology” (Goldman 1999: 77).

In the epistemic democracy account – democratic procedures are the best mechanism for making the right decisions, for tracking the truth. The truth here is mostly understood to be some variant of the 'common good', deliberatively understood. I am inclined to agree with the pure epistemic

proceduralist account in that it probably does not make sense to talk about the ‘common good’ or ‘truth’ of the public good defined outside of the democratic procedures – that they are the best at arriving at it by definition. If there is a common good, perhaps it cannot be known outside of the procedures for discovering it.

However, there are some true propositions that have a bearing on this process of finding out what the common good is, propositions whose veracity is independent from the process of their discovery and implementation. We may also call them, following Searle (1995), brute facts. To use a somewhat overbearing example, passengers on a plane deliberating on what course to take will not change the brute fact of a mountainous range fast approaching on their flight course. They may not trust their navigator, for various reasons – he might be arrogant, or suspect of having his own agenda, but he might be the only expert on board who is best equipped at alerting them to this non-negotiable true belief and it would be in their best interest to heed his advice.

Much political disagreement seems to stem from disputing what the facts are – motivated reasoning, biases and sheer willfulness can sometimes obscure the reality of the brute, non-negotiable facts. This political disagreement does not make facts less real and less relevant. Ideally, many of these disputes could be resolved by sharing correct information and open-mindedness (Landemore 2013: 214). There seems to be a lot of politically motivated selective acceptance of science – some of the scientific facts are accepted not because of their persuasiveness, but because they fit or cohere with the overall political worldviews. So, for example, some liberals may tend to overestimate the dangers of vaccines or GMO products, whereas conservatives may be less inclined to believe climate science research and the uncomfortable facts it uncovers (cf. Lewandowsky et al. 2013). Again, this may be unfortunate, but does not make the facts any less real. It might even count as an argument against pure proceduralism, precisely because it does not possess a benchmark of an independent standard to decide whether outcome of political decision-making is good or not.

Furthermore, using G.A. Cohen's distinction between 'fact-sensitive' principles and 'basic ideals', there is a sense in which empirical accuracy matters also for some of our normative commitments – the context-dependent subset of normative principles, which require not only coherence with the basic values, but co-dependence on the brute, factual reality for their validity (Cohen 2003). This connects with what we have noted earlier about the impossibility of value-free technical solutions and scientific process (Ezrahi 1995). In some cases, especially in the social sciences, facts almost never speak for themselves – they are value-laden from the start. For example, a sociologist conducting research into the nature of prejudices against Roma people works with definitions of prejudice that are not only descriptive but evaluative – the definition itself matters (cf. Neuman 2006). In other cases, facts may well be 'brute' and objective, but their discovery, study, categorization, contextualization, and application may very well not be. Some of this can stem from arguing about knowledge as means, viewing it as contested, when what is actually problematic and value-laden are the end-uses of this otherwise value-innocuous knowledge. The value plurality and disagreements in production and application of facts do not have to deny their objectivity, but they can complicate the picture and open another realm of potential political conflict, which cannot be legitimately sidestepped without the involvement of some democratically legitimate procedures.

To sum up, we can ask the following: Is the truth independent from the procedures used for arriving at it? It would appear so, but that raises an important problem. Arguably, it is hard to defend the epistemic benefits of democratic procedures without making a gesture at some standard of correctness. Without it, it would not make much sense to say a particular outcome is good or bad. Here I rely on the (quasi)veristic social epistemology (Goldman 1999), which would maintain that the truth of propositions is independent from the procedures used for their discovery. But this raises the central problem – what to do when democratic procedures and 'true knowledge' conflict. In other words, when experts, i.e., people with better access to right and true beliefs and the general public's preferences come into conflict, how can democracy prevail without making mistakes with potentially catastrophic repercussions? This work's main concern is merely with the empirically

ascertainable propositions about the true state of the world, which may enable the public to better track their desired 'public good', but which of themselves are not a matter for debate.

Once we reject Peter's pure epistemic proceduralism and commit ourselves to some standard of correctness, independent from the political procedures, do we not open the doors to a potentially authoritarian cognitivism? I do not believe so. I think we can maintain the expectations of procedural fairness necessary for democratic legitimacy and keep a standard of correctness with experts as its best placed arbiters. But in order to see why, we will have to look at the problem of constitutional democracy and judicial review. There is a good case to be made why the problem of judicial review and our problem of political cognitivism are analogous and the solution may well be analogous too.

## 5. The Judicial Review Analogy

This chapter explicates the analogy between judicial review and expertise-based political cognitivism. In order to do so, firstly it discusses two signature opposing accounts of judicial review, by Ronald Dworkin and Jeremy Waldron, respectively. These are used to draw out some of the most pronounced points of the debate over the legitimacy of judicial review. Though these two accounts are ultimately found unsatisfactory, they are instructive in that they throw into stark relief the significant aspects of the tension between democratic procedures and the substantive standards limiting them (i.e. Dworkin's 'rights as trumps').

Drawing extensively on the writing of Frank Michelman, I will then show that a compromise reading of judicial review is possible. This reading manages both to secure the procedural respect for democratic majorities while maintaining the substantive procedure-independent benefits associated with robust judicial review<sup>35</sup>. This reading will then serve in the subsequent chapter as a parallel for my account on how to accommodate democracies with expertise-based political cognitivism. The chapter argues that judicial review, and by analogy, science based 'expert review', is legitimate in curbing, or significantly framing, certain democratic decisions, based on a standard independent from the procedures through which the decisions were arrived at, provided that the reviewing itself had certain procedural features, namely maintaining the institutional basis of equal respect-worthiness of every citizen.

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<sup>35</sup> A similar compromise reading is also advanced by Kyritsis (2012), who argues that 'constitutional review' is acceptable provided that we recognize the subsidiary role of the courts to the legislature within the constitutional framework. Legitimacy is a question of both substance and procedure: a democracy has to follow certain rules of procedure to arrive at results in accordance with certain broadly conceived values. An institutional design that recognizes the benefits of the division of legislative production and legislative oversight into separate bodies does not violate political equality. As long as we recognize this (and do not claim that judges are somehow inherently better at deciding questions of principle), then "constitutional review is not in principle at odds with representative democracy" (Kyritsis 2012: 299).

By judicial review (or ‘constitutional review’) I will understand the broadly conceived practice of the revision of legislative acts by courts so appointed to ascertain the compatibility of laws with fundamental rights and constitutional principles (defined in the constitution). Judicial review cuts right at the question of legitimacy, since its primary focus lies with statutes of the democratically elected representative body. Critics of judicial review point to this central feature as the reason judicial review is illegitimate, since it gives power to an unelected group of judges to strike down democratically passed legislation on the pretext of somehow knowing better what is or is not in accordance with the constitutional principles (Kyritsis 2012).

### **5.1 Introducing the Analogy**

The solution to the threat of cognitivist authoritarianism seems to lie in an analogy with the problem of judicial review. The analogy, like all analogies may not be perfect – but I believe it is analytically fruitful in an important sense: Both political cognitivism and constitutional democracy presuppose an independent standard that can act like a check on the free expression of self-government. Furthermore, both operate in conditions of value pluralism and persistent and substantive disagreement about both facts and values of which the requisite standards presuppose an agreement and objectivity. In fact, part of the appeal of judicial review rests in the glow of expert legal scholars reviewing legislative decisions of an untutored representative body.

However, the analogies end when considering the time and manner of intervention. Whereas judicial review works only after a decision has been made, in an institutionally pre-defined manner, and only in certain situations, the ‘expert review’ is an ongoing process, one that not only continually (re)defines what the standard of correctness is, but which can enter into the process at any time – either defining the range of options and choices at the outset, supplying information throughout, or assessing decisions post fact.

But the analogy is robust in an important sense. When discussing the question of judicial review, we also face the paradox of the clashing commitments of the acts of people governing themselves and

the foundational constraints placed on this government by constitutional law and an unelected body of judges administering it. Constitutional democracy faces a similar dilemma to the one facing political cognitivists: do we lose something of intrinsic value when democratically passed decisions are struck down or deemed inadmissible, because they breach some standard?

In both judicial review and expert-based political cognitivism we expect the legislative action of the legitimate majority to be both framed and curtailed by an institutional expression of a standard other than pure procedure. In this we understand it is not enough that procedures are fair and respectful of equality when we also expect the decisions yielded to be somehow “correct” (that is ‘true’ for cognitivists and ‘respecting the principles of democratic equality, human dignity and rights’ in the constitutionalist’s view). But the tension persists – is it truly enough, that the correctness has been ascertained by an expert body (directly unaccountable to the electorate) which only has to put forward its reasons for public scrutiny? Can we overcome ‘the counter-majoritarian difficulty’ (Bickel 1986) while achieving the democratic outcome and still keep the procedural respect?

In order to proceed with an answer to this question, we need to compare and contrast two polar opposites of managing the problem of judicial review. At the one end of the spectrum of opinion we can place Ronald Dworkin, who sees no difficulty and believes that some form of judicial review might be a requirement of broadly conceived public equality in a democracy. At the other end, Jeremy Waldron sees judicial review as an insurmountable obstacle for genuine democracy expressing the moral and political equality of all citizens. Nothing less than removing judicial review and placing full power of legislation into the hands of the people through their acting representatives would rectify this slight.

Dworkin’s and Waldron combative stances on the issue are determined by their respective conceptions of democracy. The distinction in their conceptions of democracy rests in how they frame the legitimacy of democratic decisions. It is the distinction between substantivism and proceduralism, where legitimacy of laws is best characterized as either arising from “their

permissibility within some antecedently given moral limits, or, as arising simply from the fact that they are the outcome of certain decisions mechanisms that enjoy the presumption of rationality”, a distinction which Zurn (2002: 476) has also tracked back to Locke and Rousseau. These respective conceptions will be further outlined below.

From the foregoing it might be recognizable that my intentions and intellectual sympathies lie with the idea of democratic constitutionalism, convinced as I am of the necessity of an independent criterion of correctness. In fact, I am convinced that the more our best democratic accounts rely on the professed virtues of deliberation and procedures, the greater also the need for a mechanism that would signal shortcomings and potential errors. This remains true even if these shortcomings should be defined based on procedures alone, let alone substantive standards of correctness (Bertomeu 2011). Even the starkest proceduralist will admit that the procedures are chosen for their property of adhering to some substantive value deemed desirable (Zurn 2002).

However, I do see serious fault with Dworkin’s purely instrumentalist outcome oriented perspective of democracy (Dworkin 1996, 2000, 2011 and elsewhere). There is, I believe, some intrinsic value to the democratic procedures that ground the public equality of citizens. Using only Dworkin’s conception of judicial review as an analogy would precisely not preclude a movement to some version of cognitive authoritarianism – democratically fair procedures would be less important as long as the correct and desirable results were achieved.

Of course, Dworkin does not maintain that a judicial review is a pre-requisite of a regime to be considered fully democratic. His insistence on the ‘moral reading’ of laws and governmental acts, where we interpret and apply them so that we can ascertain whether they are in accordance with certain constitutional principles underlined by basic moral precepts, is not tied to any specific institutional form of how this moral reading is to be conducted. “Many institutional arrangements”, argues Dworkin, “are compatible with the moral reading” even if they do not give this power solely



to the judges. But just as “[d]emocracy does not insist on judges having the last word, (...) *it does not insist that they must not have it*” (Dworkin 1996: 7; emphasis added).

On the other hand, we have Jeremy Waldron’s famous case against judicial review, which posits that circumventing the will of the majority expressed through democratic procedures undermines the moral and political equality of citizens. Waldron believes that disagreement is pervasive to the point where we also disagree about what rights are and what they entail. It is “disagreement all the way down, so far as constitutional choice is concerned” (Waldron 1999: 295) and embalming some of them in a constitutional bill of rights presents democratic majorities as potential predators, not fully equal and moral agents capable of responsible action. If we decide to build judicial review into our institutional arrangement, we are basically sacrificing self-government.

At the same time, assigning everyone equal weight in a purely procedurally understood political equality could very well result in laws which even proceduralists would agree are morally objectionable. We can see then that both Dworkin’s and Waldron’s accounts have shortcomings which rhyme with our thesis’ central concern. It is prudential from an epistemic standpoint to let judges decide certain issues to preserve constitutional standards, yet it also seems to go against the dignity of legislative process, harming our self-government. And while, on the one hand, in a purely outcome based concept of democracy something crucially important for democratic legitimacy is threatened to be lost, on the other hand, in a purely majoritarian conception, everything of substance, including the rights and procedures themselves, is up for grabs.

## **5.2 Dworkin’s Substantive Conception of Democracy**

For Dworkin there are foundational moral principles at the heart of democracy. These can be summed up under the rubric of political equality. This basic principle is embodied in a country’s constitution. However, there is admittedly a gap between the core principle and the practical interpretation of what this principle is supposed to entail for the “rules and norms that structure decision making in particular institutional setting.” (Macedo 2010: 1030) A democratic constitution,

such as the one in the United States of America, commits the government to recognize that its subjects have “equal moral and political status” and therefore, it must “treat them all with equal concern” (Dworkin 1996: 8).

What these very general principles imply can best be ascertained by a “moral reading” of the constitution, that would take heed of practical contingencies, institutions, historical legacies and past practices. The interpretation of the law is limited to what the law itself actually says (and not what the authors of the law would have preferred it to say in various concrete cases) and the overall integrity or *fittingness* of the interpreted principles within the constitutional system. A moral reading thus asks to find “the best understanding of what equal moral status for men and women really requires” (Dworkin 1996: 11).

For a democracy to be able to call itself a democracy, Dworkin would maintain, the standard by which it is to be judged is best perceived as a set of output-oriented, substantive requirements and not procedural ones. As Michelman puts it, democratic credentials of the basic law for Dworkin are best seen as one “of matter not manner” (Michelman 1999: 17). It is not the how, when, where, and who, but a simple question of what.

The reason why judicial review has had a bad reputation and why the notion that judicial review somehow compromises democracy depends, according to Dworkin, entirely on mistaken premise about the source of democracy’s normative strength: the Majoritarian Premise. The majoritarian premise insists that for outcomes of political processes to be considered *fair*, the decision reached should be favoured by a majority or at least a plurality of citizens had they had the time and adequate information to reflect on the matter. It does not entirely rule out the possibility that on some occasion the will of the majority should not govern, that under certain conditions the will of the majority best not be heeded, however, it would insist that democracy has been offended and that “something morally regrettable has happened” (Dworkin 1996: 15-16). Even when there are

strong reasons for withholding the decision a majority might have favored, something unfair has come about.

Dworkin rejects the majoritarian premise, and in its stead he puts forward a constitutional conception of democracy, in which “collective decisions [are] made by political institutions whose structure, composition, and practices treat all members of the community, as individuals, with equal concern and respect” (Dworkin 1996: 17). It is the equal concern and respect part that would require much the same institutional structures and procedures of majority rule and popular elections, but not exclusively so. However, they are only instrumental – should some non-majoritarian feature be more successful at achieving this goal of equal respect there is no principle reason to see this as a matter of moral regret and prevent this feature to be employed.

We can then, in the name of democracy, accept and maintain non-majoritarian procedures and institutions that preserve the equal status of citizenry. It would be a mistake to view majority rule as a fundamental principle of democracy when it is only “one among a variety of decision rules that may, but need not, advance the project of collective legitimate self rule based on political equality” (Macedo 2010: 1030). The conditions of moral membership in a political community is the democratic condition “that must be met before majoritarian decision-making can claim any automatic moral advantage over other procedures for collective decision” (Dworkin 1996: 23).

Only a political community that respects your individuality and moral status as a citizen capable of taking an interest in shaping and influencing collective outcomes may inspire you to reasonably decide to ally your political agency with it (Michelman 1999: 30-31). It would be beyond the pale of independent moral agency and self-government of the people for someone to propose a constitutional order that would have all laws and rules and policies potentially vetoed or replaced by a council of experts tracking some ideal of fairness or policy excellence. However, it is an entirely different issue to have a constitutional provision that allows positing that some law, policy or rule “undercuts or weakens the democratic character of the community” and assign the matter to be

decided by a specialized court, potentially letting it to revise, veto or replace the offending statute. Should the court find that a statute indeed does impinge on the conditions that make self-government possible, then such a court's decision does no harm but, in fact, "improves democracy". Had the court not intervened a defective statute would have remained on the books, leaving everyone worse off (Dworkin 1996: 32).

This alone does not entail a positive argument in favour of judicial review. And Dworkin does not offer such an argument. Since democracy can hardly "prescribe the procedures for testing whether the conditions for procedures it does prescribe are met" (Dworkin 1996: 33), he suggests simply a result-driven standard where "the best institutional structure is the one best calculated to produce the best answers to the essentially moral question of what democratic conditions actually are, and to secure stable compliance with those conditions" (Dworkin 1996: 34). If we admit as much, then there is fundamentally nothing wrong, says Dworkin, with letting judges interpret the rules and effectively – to an extent – govern the country. And there is a practical possibility that "an independent judiciary will tend to get closer to the truth than would the great body of the people or their elected tribunes in the legislatures" (Michelman 1999: 19).

[W]hat is at stake here is not preference but judgment, and judgment, at that, of issues of a somewhat philosophical character, such as which of the competing interpretations of some abstract basic-law principle conforms to the right or best conception of a democratic regime. It may not be a very good idea—assuming it would be possible in practice—to turn every legislator's every vote on a pending bill, and every citizen's every decision about whom to vote for in a congressional or state legislative election, into an occasion of judgment of such issues. They are issues to which full-time political philosophers dedicate their lives, and to impose them on legislators and citizens in their ordinary political activities may be to overload those activities preposterously and ruinously. (Michelman 1999: 22)

Yet Dworkin has a problem in that he seems to have “mistaken a question about what a person has done for a question of what a person thinks, or how a person feels, about what someone else has done.” The fact that a political community has made one feel all warm and fuzzy for all the respect it pays him by securing some constitutional guarantees is not the same as giving one ample reason to think he is the author of those rules one lives by. It is not the same to truly self-govern, that is, to make your own laws by yourself – and to feel sympathy and be capable of identifying with what laws *someone else* passed for you. Insofar as judicial review *makes* the rules by *deciding on* the rules of law-making based on conditions geared toward equal concern, it may make you feel sympathetic to them, it may even give you reasons to abide by them, but it is hardly self-government (Michelman 1999: 32).

### 5.3 Waldron and the Centrality of Disagreement

Jeremy Waldron has made a name for himself as one of the staunchest critics of the practice of constitutional democracy and judicial review. There is, he thinks, a disdain for democracy present in many philosophers’ work, including Dworkin’s, evident in their disavowal of the principle of majority decision (Waldron 2010: 1043). The inevitability of disagreement in politics is at the center of his argument for why judicial review should be looked askance at by all those who cherish democratic legitimacy.

The unquestionable fact of life is that even among reasonable and good faith people there will be persistent and substantial disagreements about matters of morality and politics. The question that political philosophy faces is then what sort of political procedures should be in place capable of accommodating this intractable adversity of opinion among citizenry. Of course, the nature of the proposed political procedures is itself a potential matter of insoluble disagreement. It is the natural circumstances of politics that the law which is to provide a framework for collective action and “enable us to act *in the face of disagreement*” is itself also the subject of intense disagreement (Waldron 1999: 7). What makes a law legitimate and acceptable to all those who might disagree

about it on substantive grounds is that it was passed by at-the-time agreed upon procedures in a diverse, ‘polyphonous assembly’ of representatives of all citizens, in whose name they act (Waldron 1999: 8).

One concern about such legislation is that it might give rise to a tyranny of the majority and result in an encroachment on the rights of individuals and minorities. The entrenchment of basic rights and liberties in a constitution is supposed to alleviate such fears. However, Waldron argues, the very content of a supposed bill of rights is subject to as much disagreement as anything else. It is not only a question of what counts as a right, but what is the presumptive right’s correct interpretation and best application. It is puzzling to talk of ‘rights as trumps’ as if they were somehow beyond disagreement and could truly trump majority decision based on our common resolve and understanding (Waldron 1999: 11-12).

Furthermore, there is, according to Waldron, a double standard of sorts when it comes to the notion of a tyranny of majority. On the one hand, rights-theorists, such as Dworkin, stress the moral agency and responsibility of all persons, who can be trusted to take responsibility over their own lives and actions and respect similar efforts of others *and* on the other hand, at the very same time view a potential majority of these “upright and responsible autonomous individuals” as “irresponsible Hobbesian predators” waiting to happen (Waldron 1999: 14).

Finally, it looks too much like an insult, to remove an issue of moral complexity on which citizens disagree and move it to a higher plain to an unelected body of judges, only to have the same judges who disagree among themselves along the very same lines finally decide the matter on the same majority principle that was deemed unfit for the citizens and their representatives (Waldron 1999: 15).

Instead, Waldron advances the argument for majority rule based on the principle of political equality – final decisions about politics should be made by majoritarian procedures to maintain the right to participate, ‘the right of rights’. By saying that participation is the right of rights, Waldron does not

mean that it has priority over all the other rights, but that the exercise of the right of participation is especially appropriate in situations when “reasonable right-bearers disagree about what rights they have” (Waldron 1999: 232).

Principle of ‘participatory majoritarianism’ is not meant as a neutral fixing point, we do not invoke it in order to overcome the disagreement. There will always be disagreement, no matter what procedure is in place. But when we say someone is a right-bearer, we attribute them “agency and capacity for moral thinking” (Waldron 1999: 248-50). Therefore, what matters is that when there is disagreement, the fairest and simplest possible mechanism for settling an issue is the one which allows us to see which side has the greatest support. The principle of participatory majoritarianism is such a procedure, because it gives everyone an equal say and everyone’s say has an equal weight. Political disagreements simply make no other decision rule more preferable than majority rule (Waldron 1999: 283).

Waldron would readily admit that majorities may act tyrannically and can make mistakes, but then so can all the other systems<sup>36</sup>. Legitimacy is a problem for every decision-making procedure and for all political authority, for aristocracy, judicial rule, etc., not only for majoritarianism. But all the other decision-systems have one more potential defect: “they do not allow a voice and a vote in a final decision-procedure to every citizen of the society” (Waldron 1999: 299). Waldron’s answer then boils down to the “contention that we should prefer majority rule to minority rule in conditions in which we disagree about everything else and know only that one side has numbers on its side” (Macedo 2010: 1033).

Waldron takes issue with Dworkin’s argument that judicial review does not devalue self-government. For one, the claim of improved public debate is dubious. Waldron thinks it is more “liberating” to be

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<sup>36</sup> However, consult Juan Gonzales Bertomeu’s (2011) very thoughtful analysis of why critics of judicial review, like Waldron, unfairly stack the deck against judicial review by idealizing and abstracting away from how democratic institutions really work. A balanced evaluation of institutional working might find that, *ceteris paribus*, a constitutional democracy is *more* legitimate than a majoritarian system without judicial review.

able to discuss controversial moral issues directly “rather than having to scramble around [...] scraps of some sacred text in a tendentious exercise of constitutional calligraphy”. The public debate would not be more dignified or sophisticated simply because it is being conducted around an interpretative examination of pre-existing documents (Waldron 1999: 290).

Secondly, despite Dworkin’s argument to the contrary, “[t]here *is* something lost from a democratic point of view, when an unelected and unaccountable individual or institution makes a binding decision about what democracy requires” (Waldron 1999: 293). Should the courts make a right decision, then, of course, there is *something democratic* to set against the loss, but it is still a loss nevertheless. But when an elected and democratic institution makes a decision that turns out to be wrong substantively for democracy, then even despite this loss “it is not silly for citizens to comfort themselves with the thought that at least they made their *own* mistake about democracy rather than having someone else’s mistake foisted upon them” (Waldron 1999: 293-294).

To the worry whether eschewing limits on political outcomes we leave everything ‘up for grabs’, Waldron’s unflinching answer would be ‘yes’. Everything that would be a subject of ‘good faith disagreement’ is up for grabs, it has to be. To say that something, including principles associated with democracy about which there might be contentions, is not up for grabs would be to suppress the disagreements and to deny citizens the right to express their views, excluding them from politics<sup>37</sup>, denigrating and pathologizing them (Waldron 1999: 303). If we are to treat citizens as ‘separate moral agents’ worthy of equal respect then “we have no choice but to adopt procedures for settling political disagreements which do not themselves specify what the outcomes should be. [...] That bullet, I think, simply has to be bitten” (Waldron 1999: 304).

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<sup>37</sup> Unsurprisingly, Ilya Somin (2013), one of the aforementioned slew of epistocratic critics of democracy, argues that the existence of political ignorance greatly mitigates any objections toward judicial review. He sees in judicial review the strengthening of democratic accountability. And it should be noted, that the existence of political ignorance is a fact, whose introduction into the debate can hardly be construed as denigrating or pathologizing the voters, unless one already entertains an impossibly high opinion about the capacities of the average voter.



## 5.4 Michelman and Respect-worthy Democracy

So do we need to really bite the bullet with Waldron? Does every procedure independent standard of democracy subvert the possibility of self-government? Frank Michelman would not bite, and I am inclined to follow him. For if by self-government we mean willingly abiding the system in place – as opposed to an exercise of personal direct control – respecting the lawmaking system even though it is not perfect and contains several features one might disagree with, if self-government is to mean finding reasons to uphold the system as a whole, then we can have self-government and keep the substantive standards as well. Such redemptive feature does not have to be a universally agreed upon content, nor can it be connected solely to the fact one had a direct procedural influence on it (Michelman 1999: 52-53).

If we agree on the importance and desirability of some procedure independent standards for judging the rightness of political systems, then that redeeming feature that would allow you to consider yourself to be in self-government, that “attribute in a set of basic laws that could possibly command your respect [...] must have something to do with the chances of their [the standards] being *right*.” And, continues Michelman, “those chances do not closely correlate with *your* having retained a shred of direct input to deciding their content, unless you believe yourself exceptionally immune to mistaken judgments about the rightness of laws” (Michelman 1999: 54).

Just like Waldron, Michelman takes seriously the essential epistemic indeterminacy of the right interpretation of the foundational principles. However, this is not a radically perceived indeterminacy, merely not *publicly ascertainable* one – due to the well known Rawlsian “burdens of judgement” that plague normative questions of rules of cooperation. Michelman goes on to suggest four steps to be taken here to be able to consider the rights and wrongs of basic political arrangements.

Firstly, abiding by the system of laws should be motivated with good reasons by genuine respect for the lawmaking and not just to avoid coercion. Genuine respect for laws is then a condition of

freedom. Secondly, there are foundational principles of moral rightness for the basic law and its interpretation, principles to which all under the law's purview has good reasons to agree. The tradition of western political thought can be consulted for a full laundry list of these principles, with toleration, freedom of thought and conscience, rule of law, equality of concern and human dignity among them. Thirdly, our respect for the system of laws is based in the recognition that the system is in accord with the aforementioned principles (Michelman 1999: 55-56).

Fourthly and finally, there will be disagreement about various points of 1 through 3 even among reasonable people (given the burdens of judgment), potentially leaving some without respect for the system. That is unless we can identify some feature on which everyone could give the system respect even while disagreeing about some specific substantive features of it. And this alternative grounding of public respect-worthiness will have to be a procedural one, "one pertaining to the process by which current major interpretations come to have the content they have" (Michelman 1999: 56-57).

What matters in a constitutional democracy, stresses Michelman (1999: 57), is that the judicial interpretation of basic law has a respect-worthy democratic character. However, the fact also is that no one is reliable enough, not even the best situated judge is immune from making mistakes about what the right principles require in a particular decision. Given what we know about the extent of political polarization, might relying on an institutional advantage of the judiciary, as Dworkin seems to, not look increasingly like an unfair disenfranchisement of the people, as Waldron would have it?

Though we may agree in the vaguest terms on some procedure-independent standards that would involve commitments to equal respect and concern for all citizens, the identification of the correct specifications and applications is wrought with misunderstandings, disagreement and mistakes and no one "judging in isolation [...] can possibly be a perfectly reliable guide to exactly what these standards require" (Michelman 1999: 59). Yet it is possible, says Michelman, to ask the question of the extent of the interpreter's reliability and "*what we can do to bolster it*" (Michelman 1999: 59).

It is here where the prudentially epistemic and the dignitary democratic requirements elegantly match up. Reliability is a matter of social and institutional conditions of the interpreter. One condition that greatly advances the reliability is “the constant exposure of the interpreter – of the moral reader – to the full blast of the sundry opinions on the question of rightness of one or another interpretation.” At the same time, we would reserve our respect only for a system where official interpreters would pay us respect by “striving to make themselves ever more effectively available to be influenced by public debates that are fully and fairly receptive to everyone’s perceptions of situation and interest and [...] opinions about justice” (Michelman 1999: 59).

Thus a respect-worthy arrangement would strive to get the basic law and its interpretations as close as possible to the right procedure independent standards *and* this effort at the same time would have to include provisions for exposing the moral readers to the utmost possible variety of opinions and interest articulations in the society (Michelman 1999: 59-60).

What we have then, is a system where we respect the system not because it is a result of our direct procedural influence, but its responsiveness to our *potential* input. It is no longer about my individual leverage being weighed or counted but my “presumptive ‘epistemic’ or truth-finding value of [my] contributions to the debate” that would help move us as a community to the right answer. And my own contribution, should I not see myself in terms of delusional grandeur, is no bigger, more important or more “correct” than that of anyone else (Michelman 1999: 60).

Michelman offers a very elegant resolution of the central problem. Yes, there is a substantial disagreement about what the right application and interpretation of democracy’s basic law require. But still there are procedure-independent reasons of rightness at the heart of the political system that need protecting, expressing, espousing, and interpreting. However, they do not need to be expressed, interpreted or applied only ‘democratically’ to be respect-worthy. There is in fact a huge institutional epistemic advantage of judicial review. But disagreements about the rightness of democratic standards need to be aired, expressed, given ample articulation, hearing and response

from all the interested parties. Yet at the same time that does not imply 'everyone' should count or make his or her pronouncement on the matter. For respect-worthiness to apply, we only need a transparent procedure of responsiveness in place and not direct equal procedural impact. Suppose then that such a procedure is in place in democracies with judicial review, where the basic political arrangement make the courts hear out and pay respect to all adversary opinions before making their judgment, then we would be able to say that these conditions are equivalent to self-governance, for one has no good reason not to abide by them, not to respect their calls, even though he still might end up disagreeing with the particulars (Michelman 1999: 60).

Judicial review then has to be looked at as a particular institution interacting with other institutions of popular control. It would be a mistake to consider judicial review as a separate institution – ripping it out from the institutional context and examining it *ex situ* on a pathology table – without acknowledging how well it fits and interacts with other democratic institutions (Schulzke & Carroll 2011). Furthermore, it need not be justified purely on consequentialist grounds of how well it manages to track substantive standards – though it helps its case that it does have an institutional advantage in this regard – but should be understood, pace Michelman, to be grounded also in the procedural respect it pays citizens. This procedural respect, however, need not be expressed only by everyone having an explicit say in every issue – it is enough if the respect exists as a procedural potentiality and a guaranteed conduit of public opinion feeding into the decision-making mechanism. In a sense, the prevailing normative judgments of the public influence the decision; the public participates by framing the normative basis on which the decision of judiciary is made (Harel 2003: 257).

Building on the argument presented here, the following chapter will argue that a similar case can be made for a scientific 'expert review'. The process in which the conduct of scientific experts and the way it frames and limits some of our democratic choices is justifiable in the light of democratic equality as long as respect-worthy features of the process are maintained. Scientific experts need to

pay procedural respect to citizens in light of their enormous influence *and* impact on the political decision-making; however, these procedural requirements need not *democratize* science itself. Thus, robust political cognitivism is possible, but the institutional context of scientific practices will be important.

## 6. Expert Review

The task ahead is to further explicate what shape the process linking knowledge producers and political decision-makers has to take in order not to run afoul of democratic principles as well as the democratic expectations of the public. The previous chapter has introduced the analogy between judicial review and what I term here as ‘expert review’, the practice within which scientific expertise provides democracies with independent standards of correctness for acting politically. The analogy is far from perfect, but it suggests that democracies can be made safe from the independent standard of correctness and those who help identify it, provided that the institutional practices tasked with elucidating the particular standard fulfill certain requirements. This is a general requirement that manages to cover both judicial review and scientific review.

Another important aspect of the analogy, that also bears stressing, is that the standard of correctness is safe from democracy – respect-worthy practices of scientific input into politics and democratized science do not require a ‘vulgar democracy’ (Kitcher 2001: 117) where the research objectives and agenda are determined by the popular and untutored preferences of the majority. Judicial review exists to protect democratic principles from democratic majorities because it can claim a better track record in maintaining democratic equality and individual rights. Similar to judicial review, scientific practices, as they have developed, already have a major epistemic advantage in defining the standard of correctness, coming with good accounts of what is true, how things ‘actually are’. This in-built institutional epistemic advantage cannot be jettisoned at random. What is needed, however, is an account of science and its practitioners, which will maintain its epistemic advantages and fulfill the (as yet undefined) democratic requirements.

However, I should make clear that a detailed elucidation of the proper institutional mechanisms and proposals would go beyond the scope of this thesis. My main task within these pages is to propose that there is a procedure-independent standard of correctness, that scientific experts are best equipped at defining (or better – discovering) it and that this circumstance does not have to

undermine democratic legitimacy. Using the analogy of the judicial review I attempted to show how this difficulty could be allayed. The following paragraphs will elaborate some very general requirements that democratic equality has toward the scientific process. But the task of spelling out in detail what this entails for the current democratic practices and where to go from there is a subject for another occasion.

### **6.1 Democracy and Well-ordered Science**

Here I believe Phillip Kitcher's (2001, 2011) concept of a 'well-ordered science' is a good starting point. Inspired by the Rawlsian well-ordered society, Kitcher has proposed the concept of a 'well-ordered science' of how a properly functioning inquiry should work in a democratic society. An ideal scientific inquiry could be divided into three phases: in the first phase decisions are made about what resources should be committed and what research agendas should be pursued. In the second phase inquirers "pursue those projects in the most efficient way, subject to moral constraints that rule out certain ... options". Finally, in the third stage the results of the inquiry are "translated into practical consequences" (Kitcher 2001: 118). A well-ordered science would be one where the institutions governing the practice of inquiry within a society "*invariably* lead to investigations that *coincide* ... with the judgments of ideal deliberators, representative of the distribution of viewpoints in the society" (Kitcher 2001: 122-123). The particulars of the aforementioned three stages of inquiry would follow the prescriptions agreed upon by these ideal deliberators.

This does not mean that actual practices need to be instituted in a way that would try to imitate these ideal deliberations. For one thing, that might simply not be feasible. However, it is an ideal, one that we should aim to approximate to a reasonable degree. There are many areas, such as the question of research funding, oversight, accountability, dissemination and application, as well as expert certification and reliability, where democracies might put practices and institutions in place in hopes of feasibly replicating the results of the ideal situation. Some of these have already developed

haphazardly in the course of development of science as a veritistic social enterprise. Others merely await their proper elucidation and implementation (Kitcher 2001: 123).

The repository of public knowledge, which is the product of a well-ordered science, is the source from which we may then derive a standard of correctness for democracies. Drawing on his earlier work, Kitcher (2011) suggested another useful distinction, this time on the processes generating the repository of public knowledge. First there is *investigation*, where we are concerned with what should be the worthy subject of investigation, what are the appropriate procedures and constraints. Secondly, there is *submission*, where we ask who is entitled to submit reports as belonging into the public knowledge – who can submit what on which topic and what standards govern their investigations. Thirdly, *certification* asks what is required of a submission to be accepted into the repository – not only a question of what should be included but also a question of corrections, that is under what conditions can we make revisions and remove something previously included. Finally, processes of *transmission* are concerned with what parts of the public knowledge are to be available to whom and how is it transmitted (Kitcher 2011: 91).

The rules for these processes in a democracy will have a particular form which might not be governed merely by the truth-regarding nature of the scientific enterprise, but by considerations of respect-worthiness of democratic politics. As such public knowledge does not have to embody any democratic ideal, it could resolve the tension in favor of expertise and decide that the wishes and concerns of the wider public do not matter (Kitcher 2011: 103). But in order for experts and scientific practices to be acceptable from the point of a respect-worthy democracy, they will have to fulfill certain requirements. Here then is a non-exhaustive and perhaps unsurprising list.<sup>38</sup>

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<sup>38</sup> Schudson (2006: 505) has proposed a similar, though a much more cursory list of conditions to make expertise safe for democracy: First of all, expert positions should be open to all talents through equal educational opportunities in higher education. Secondly, experts as part of their education need to be encultured with core democratic values of discussion, listening, humility and acceptance of differences. Finally, expertise requires institutional mechanism that can keep experts accountable.



First of all, people who either claim expertise or whose expertise is a requirement for their involvement in publicly relevant discussions of science and technology must be subject to publicly verifiable scrutiny of their proper certification and reliability, proving their competence and reputation. Determining the experts' authority is not an easy matter even for epistemologists (cf. Strevens 2010), but it gets even more difficult if the judgment is supposed to be done by the lay public. At this point I follow Anderson's (2011) aforementioned criteria for recognizing experts in public discussions, their claims, as well as their honesty and epistemic responsibility (cf. Goldman (2001) for a similar set of criteria, emphasizing previous track record)<sup>39</sup>.

The simplest way to assess an expert claim is through a hierarchy of expertise: from laypersons, through people with various science degrees and up to doctoral degrees, to scientists who are active in the field in question, are widely recognized by their colleagues, cited and published, up to the leaders of the field, who "have taken leading roles in advancing theories that have won scientific consensus or opened up major new lines of research, or in developing instruments and methods that have become standard practice" and won awards and other prestigious positions. The higher the putative expert is on this scale, the more we have a reason to listen to their testimony about the

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<sup>39</sup> Earlier, Alvin Goldman (1991) has posited several 'truth-revealing' situations that allow even us as novices to the field to successfully identify experts from a pool of pretenders. He catalogues them into "four homely domains (...): (1) prediction domains, (2) factual-record domains, (3) repair domains, and (4) design domains" (Goldman 1991: 129). In the first domain the truth of the matter – and the identity of the experts – will be revealed based on the success rate in the prediction of events (ranging from weather patterns to election results). The second domain is tied to memorized factual knowledge that can be compared to an undisputed record.<sup>39</sup> The third domain is tied to diagnosing of a problem and successful repairing of a malfunctioning system, something that would confound a novice, whose detection is limited to spotting the existence of a problem/malfunctioning (the car won't start, my nose keeps bleeding, etc.). Finally, the design domains are areas where experts are tasked with supplying a design or a solution to a set of specifications achieving a desired effect, which can be easily ascertained even by the novice, who would nevertheless remain stumped if left to fend for herself (write a symphony, propose an economic policy reducing unemployment, design a dam). (Goldman 1991: 129-130)

issues in his domain. It is relatively easy to apply these criteria, since all the required information is usually readily available on the web (Anderson 2011: 146-147).

Furthermore, when judging the experts' honesty, there are several factors to look for that might discredit or severely impinge on the reliability of their testimony. The list proposed by Anderson is by no means exhaustive and some of the information can be hard to come by. However, there are clear-cut cases, such as: evidence of a conflict of interest (e.g., funding by a vested interest); evidence of academic dishonesty, plagiarism, incorrect citations, data cherry-picking, misquoting, misusing statistics, faking experiments, as well as misrepresenting the arguments of opponents, or making false accusations of dishonesty (Anderson 2011: 147).

Finally, there are factors which might indicate evasion of accountability, and thus can be symptoms of epistemic irresponsibility. There is the evasion of peer-review, the reluctance to share one's data, to reveal one's methods and procedures and the general failure to submit one's research findings to the scrutiny of his peers in the relevant publications. Then there is the dialogical irrationality of repeating refuted claims without providing new evidence, and advancing what can only be deemed crackpot theories in other domains, or associating with other known crackpots (Anderson 2011: 147-148).

This previous criterion of identifying experts is intimately connected with the second requirement of respect-worthiness: scientific research bearing on matters of public import needs: a) to be subject to a thorough peer review, and b) to be reproducible, with c) all the relevant data and coding used in the research freely available. This should be the gold standard, the sine qua none of any evidence-based policy discussions. Note, for instance, that if the foregoing account is correct, then an open-access publishing of scientific contributions financed by public funds and used in public policy discussion might not only be a good idea, it could very well be a requirement of democratic legitimacy.

The third requirement pertains to system of public education, which should be geared toward educating citizenry to be a competent interlocutor of policies involving scientific research. The basics of statistics, methodology of science and epistemology should be necessary parts of any high school curricula. The goal of any education should be an intimate knowledge and understanding of the process of inquiry, not simple memorization of its factual findings. No educated citizen can make any informed and tutored judgments about basic policies without at least a rudimentary knowledge of these areas.

The final requirement then prescribes a reflexive attitude of expertise toward the public concerns over research and its findings. Similar to judicial review, an expert scientific review to be legitimate requires the institutionalization of structures of responsiveness. The public does not have to dictate what research is opportune, what findings or what applications are admissible – but the decisions made about these matters should be exposed to the “full blast of the sundry opinions on the question of rightness of one or another interpretation” (Michelman 1999: 59).

Experts have to be continually exposed to the varieties of public opinion and if not guided by them, they should at least be cognizant of their views and worries and adequately respond to them. There have been a number of institutional proposals for the management of these lay-expert relations and greater citizen engagement and participation in the complex governance of science in democracies: for example various ‘consensus conferences’, ‘hybrid forums’ and ‘citizen panels’ have been put forward as an adequate institutional solution (Bocking 2004, Smith 2009, Brown 2009, Callon et al. 2011). This does not necessarily entail a death by a thousand committee meetings; it is merely a requirement of openness and reflexive debate with societal stakeholders<sup>40</sup>. What these institutional

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<sup>40</sup> Greenwood (2010) has focused on Hayekian insights into how democratic institutions might better handle dimensions of complexity involved in modern politics. He also stressed the importance of institutional innovations seeking greater involvement of scientific experts in public discussions, because they draw on varied, dispersed and differing normatively-laden sources of knowledge. The function of expertise can thus be viewed in Hayekian terms as a ‘discovery process’; a tacit, impressionistic understanding and locating of the

innovations entail is nothing more than an extension of the peer review process to a larger and more heterogeneous community.

For example, there are controversial topics, such as GMO or climate change, where scientific consensus exists, but where public fears and distrust perseveres – often along ideological lines. The correct way forward could be instituting a ‘consensus conference’ or a ‘citizen panel’, where representatives of the wider public of all manner of opinions and background would engage scientists and their critics. Obviously, this is not a mechanism to persuade everybody, disagreements may persist and people who are deeply entrenched in their ‘chimeric epistemologies’ (Kitcher 2011) may never meet evidentially force strong enough to dislodge them. But the openness and responsiveness to public concerns may simply be a procedural requirement of legitimacy if the implemented policies are to be based on the scientific findings initially deemed controversial by the public.

Of course, the construction of institutions and procedures for science consultation is not without its pitfalls. The procedure necessarily incorporates the binary division of experts and laymen where the risk is that the dynamics of the proceedings devolve into ‘elaborate educational exercises’ on the proper ‘public understanding of science’ (Blok 2007: 171). Since the consensus conferences mirror the overall unequal scientific competence of the society at large, and even though the selected citizen participants can internalize some of the competence, the proceedings can also be dominated by the experts’ perceived social status and ‘impenetrable semantics’ (Fixdal 1997: 372, in Blok 2007: 171).

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relevant facts that helps us as a community to move forward when facing complexity (Greenwood 2010: 783-784).

Much of what the experts will say will inevitably be judged on external criteria – their institutional affiliation and background, personal behavior and communication skills<sup>41</sup>. This makes the composition of the expert panel crucial since “the legitimacy often hinges on perceptions of a fairly balanced expert panel” (Blok 2007: 171). The problem then is one of methodological skills in setting up such conferences and can be best characterized with the question ‘who is the expert on selecting the experts for consensus conferences?’. Furthermore, much depends on the willingness of the experts to engage with the public. Schudson (2006: 505) was probably correct in emphasizing the importance of enculturating experts themselves with core democratic values of humility and listening to different opinions, enhancing their understanding of the public, since any engagement with the laymen has the potential to try their patience.

The practical challenges of setting up institutions for science consultation include: *the initial framing*, or how to carefully present the issues so as not to tip the scales in favour of particular value commitments, while maintaining an open and flexible space of discussion; the aforementioned *expert selection*, i.e. finding a balanced panel of specialists equipped with a variety of ethical and technical competencies; and, probably most importantly, boosting the *consequences* of citizens’ views, making their opinion matter in a meaningful degree and actually taking their concerns seriously (Blok 2007: 176-177). There is a considerable risk that a science-centered panel will dismiss profound, but inexpertly expressed concerns of laymen as simple incompetence or ignorance. Finally, these institutions, despite their potential for advancing the respect-worthiness of democracies’ use of expertise “remain singular, short term events, with no guarantee of lasting impacts”, making it an open question what other ways there are for institutionalized consultation of the general public (Blok 2007: 177).

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<sup>41</sup> For a recent, troubling analysis of the efficacy of trivial elements, such as graphs and formulas, on successful appearances of being ‘scientific’, see Tal & Wansink (2014).

Callon et al. (2011) have proposed ‘hybrid forums’ as a way to foster ‘dialogic democracy’, as opposed to ‘delegative’ democracy, so as to avoid the binaries of prescribed roles inherent in delegation. In their view, the procedures of delegative democracy have been unable to keep up with the growing tide of science and technology (2011: 225). It remains unclear what exactly hybrid forums are supposed to be, since Callon et al. define them as “open spaces where groups can come together to discuss technical options involving the collective” with the participation of heterogeneous groups “including experts, politicians, technicians, and laypersons who consider themselves involved”, with “questions and problems [...] addressed at different levels in a variety of domains, from ethics to economic and including physiology, nuclear physics, and electromagnetism” (Callon et al. 2011: 18).

Contrary to Callon et al., these procedural innovations are not needed to supplant a putatively defective delegative democracy. They serve only to enhance the procedures of consultation, mobilization, and responsiveness of delegative democracies and thus to enhance the legitimacy of the democratic decision passed under the guidance of expert scientists. Callon et al. (2011), when intelligible, are simply wrong to insist that the techno-social issues are beyond the capabilities of contemporary ‘delegative’ democracies. If anything, the foregoing account’s main task was to show that delegative democracies are perfectly capable of squaring the expert and the democratic judgment.

Hybrid forums, just like various ‘citizen panels’ and ‘consensus conferences’, as well as other deliberative mini-publics, have been proposed as an institutional solution to the deficiencies of deliberation. Mass public deliberation is not thought to fail because of any cognitive deficiencies of the mass public – as Landemore (2013) made clear – since the failures are purely *structural*. The problems facing public deliberations are those of *scale, lack of knowledge and information* as well as the simple problem of *opportunities* to speak and be heard. Mini-publics are small enough to be

viable and large enough to be representative of the cognitive diversity of the public at large (Chambers 2009).

But we need to remember Simone Chambers' (2009) warning that these mini-publics, or other similar institutional innovations, should not be viewed as the only place of "genuine" deliberation ignoring the larger public sphere as a place of reasonable political debate. Vacating the public sphere as a place of potential deliberation would only serve to further delegitimize mass political decisions. The simple fact is that these institutions should not and cannot supplant mass politics; they can merely supplement it (Chambers 2009: 330-331). I would merely add that supplementing is quite enough.

Part of the expected public benefit of science is the extension of the scope of reliable knowledge, but in order for this benefit to accrue it is imperative that scientists are seen as "trustworthy in the eyes of ordinary citizens". The question then is not only one of credibility – are these people really reliable experts? – but also one of trust. Credibility is the question of what good indicators of reliability are used. The question of trustworthiness is a separate problem – do these ordinary citizens really have good reasons to believe what these specific scientists claim to be able to know (Whyte & Crease 2010: 413)? The question is not only about the epistemologically sound reasons why citizens should trust scientific conclusions, but also about the packaging of competence and sincerity presented to the public. Stringent criteria that satisfy a colloquium of epistemologists, epistemic democrats, and philosophers of science, are perfectly fine, but if they remain virtually unintelligible to the public at large, then exhortations of public ignorance and superstition remain as nothing more than an intellectual self-indulgence.

The importance of trust cannot be stressed enough. As Hardwig (1991) pointed out, trusting "is often epistemologically even more basic than empirical data or logical arguments: the data and the arguments are only available through trust" (1991: 694). Trust is an indispensable feature of knowing, since no one is a truly self-reliant knower – to know means to trust.

Gloria Origgi (2004) brings the distinction between ascribing derivative and fundamental authority to the epistemological analysis of trust. A non-reductionist view would propose granting fundamental authority, where we suspend reasons and trust someone because they trust it. The reductionist view of trust in epistemology would rely only on the derivative authority. Granting someone a derivative authority means trusting them for good reasons, considering relevant social factors, and understanding the criteria through which they can be seen as reliable, and so on. Experts are granted such authority because we judge them “to be in a better epistemic position to provide some specific information”. To trust experts means “exploiting their perception and reasoning as proxy for [our] own”, using them “as ‘tools’ as we use a telescope to enhance our perception” (Origgi 2004: 66).

At the same time, Origgi distinguishes a more fundamental ‘stance of trust’ – a common ground of mutual cognitive understanding and acceptance inherent to our communication. It is both *fundamental*, since we trust with suspended judgment, and *fragile* at the same time, because it can be withdrawn easily, should reasons to do so emerge (Origgi 2004: 70).

Part of what makes experts trustworthy can be connected to the derivative authority, which was granted to them for the epistemologically good reasons we have always had. But at the same time, part of this stance of trust is present at a more fundamental level as part of our democratic culture of shared values and concerns. The trust cannot be maintained only through directly appealed to epistemological exhortations about their reliability, but also through more public acknowledgments of the interests of the public at large and the experts’ demonstration to work in the public’s general interest (cf. Brathwaite & Levi 1998).

Meanwhile, sociological research suggests that distrust increasingly tracks political polarization and could become part of a particular ideological package (Gauchat 2012). That is an alarming development – unlike politicization of scientific findings and values it politicizes science and expertise as such, relativizing the very existence of the objective standard of correctness, potentially making democratic results less likely to succeed in tracking the truth. Thus a demonstration of communal



interest and democratic ethos on the part of the scientific community becomes doubly important. However, after this elaborate discussion it should be noted that the precise nature of the regulations concerning specific actions and institutions to achieve this goal remains an important research puzzle:

Scientific results should be trustworthy because they are reliable; they should also be packaged to be credible. This means that those of us, from scientists to policy makers to philosophers of science, should also explore what social grounds and institutions should be established to facilitate credibility between scientists and ordinary citizens, and not just explore why scientists should or should not be trusted by ordinary citizens in various cases. (Whyte & Crease 2010: 414)

## 6.2 Democracy and Expertise

In the introduction I noted Dean Machin's proposed conditions that would make any political institution egalitarian in principle: *horizontal equality* between citizens; an *acceptable form of vertical inequality* between citizens and lawmakers; the requirement of *publicity*; and an *institutionalized opportunity* for voice in the decision-making. I also contended that expert involvement in political decision-making needs to pass these conditions in order to be legitimate. It is time to take stock of this claim. As long as experts are citizens as any other and do not hold more authority because of their expertise, i.e. as long as epistocracy is out of the picture, then the first condition can be met quite easily. Similarly, the recognition of the necessity of a fair division of cognitive labour and the requirement of equal educational opportunities for all are sufficient to meet the second condition. The main challenge was to meet the latter two conditions. My hope is that the foregoing pages have responded to them.

The requirement of *publicity* is of major importance for the acceptability of expertise in democracy. Many of the expert scientific practices as they already exist are built around transparency, exchange of information, freely ascertainable methodologies, datasets, etc. But the account discussed here

proposes that in order for scientific review to be acceptable, the relevant studies – as well as the credentials of their authors – need to be publicly available for anyone to inspect.

The requirement of an *institutionalized opportunity* for voice in the decision-making can be also successfully answered with my analogy with the judicial review. Drawing on Frank Michelman I have shown that it is satisfactory that the institutions pay their citizens procedural respect – which need not entail regular and structured airing of opinions of all voters, but can be satisfied with the potentiality of public opinion influencing the questions, occasional opportunity of being consulted, possibly involving the public in potentially controversial and value-laden research issues through innovative institutions of public engagement, and also by paying the public respect through publicity itself. The openness and publicity of the scientific process not only allows anyone to investigate and ascertain the relevant expertise of the people involved, but it inherently involves also the opportunity of anyone to contribute and become an expert herself in the field in question. As Collins & Evans (2007) demonstrated, expertise comes in grades, and the costs of gaining ‘interactional expertise’ are not prohibitive.

At the same time, it bears reiterating that expertise presents a very real challenge to democratic politics. It cannot be simply redefined to fit a theoretical narrative. For example, Majdik and Keith (2011) posited that the tension between expertise and democracy could be reduced if we simply looked at expertise as an ‘argumentative practice’. Theirs is a thoughtful but ultimately misguided attempt, since what they offer resembles a rhetorical sleight of hand: it solves the tension by eliding it. Experts, argue Majdik and Keith, should not be viewed as holders of specialized knowledge in particular domains, but simply in lieu of their ability to respond to problems and offer relevant judgments. They ground their account in Aristotle’s concept of *phronesis*, best understood as *prudential* or *practical wisdom*, and reconceptualize experts as those who “can employ all the [relevant] means toward a goal”, which means “knowing what [the means] are, and being able to assign them relevance” in a way that they can give account for (Majdik & Keith 2011: 376). Expertise

would involve orientation toward practical concerns and various normative contexts in an open, public discussion; it is an “ability to see which [...] information are relevant to the problem at hand *and* to engage in an argument that puts the available information and values in dialogue” leading to a potential revision of judgment (Majdik & Keith 2011: 378).

However, by constituting expertise as a “function of democratic values and practices” (Majdik & Keith 2011: 381) we lose track of why and how the experts are able to offer relevant judgments in the first place. There is a reason, why it actually makes sense to draw distinction between expert judgments and democratic engagement. If experts become “characterized not by their epistemic dimension (i.e., who has specialized knowledge) but by an orientation toward a particular problem” (Majdik & Keith 2011: 382) we lose track of expertise as a relation to true knowledge. Being rhetorically disposed and practically oriented is meaningless without the emphasis on the epistemic dimension.

Secondly, there is also the opposite concern over making science safe from democracy. What Majdik and Keith effectively achieved was resolving of the central tension by subsuming science to politics, they conceptualized expertise solely within the framework of democratic practices. However, there have always been good epistemic reasons why this move was to be avoided – since it entails a politically/deliberatively assessed research agenda, which is anathema to the practice of free and unimpeded research. Science as a social practice has been socially beneficial as far as it was – to an extent – constituted as *free* from politics. Unlike the account I defend here, the foregoing would entail a democratization of science into a ‘vulgar democracy’ (Kitcher 2001: 117) where research practices and agendas would be open to evaluation by the untutored and eminently unknowing majority.

Similarly, Schudson (2006) believes that fears about expertise in politics are unpersuasive because “every governmental use of expertise is ultimately under the control of democratic authorities” and the question is only about the ‘length of the experts’ leash’ (2006: 497). The length of the leash is

more interesting a problem than Schudson lets on<sup>42</sup>, but we have also seen that expertise can also raise the question of who should be holding the leash in question.

He makes a cogent case for the acceptance of complexity as a necessary fact of life, urging those objecting to the presence of expertise in democracy to “overcome [their] own romanticism”. The multiplicity of life is beyond the comprehension of single individual, which means that “[d]emocratic cognition is and must be distributed cognition – but it need not be evenly distributed” (Schudson 2006: 504). But this uneven distribution still needs explicating the rules of how to maintain egalitarian respect for everyone participating – however unevenly – in this distributive cognition inherent in democratic self-rule. Without such an argument, as I have hoped to present here, a slide towards epistocracy is hard to avoid.

The question who should exercise state power, observed Michael Walzer (1983: 285), has basically only two answers: those who are directly affected by it and those who best know how to use it. It has been the second answer that has motivated anti-democratic sentiments ever since Plato proposed politics to be a *techné*, i.e. a craft requiring great deal of specialization and training. Looking at Plato’s analogy with a ship of state, where citizens quarrel about steering and navigating thus endangering themselves, when they ought to put the skilled pilot at the helm, Walzer notes that the flaw in this thinking becomes apparent once we realize that “we entrust ourselves to the navigator only *after we have decided where we want to go*” (1983: 286; emphasis added).

The point I have tried to make is that the question of expert knowledge and democratic politics does not necessarily throw us between the Scylla of vulgar democracy and the Charybdis of epistocracy. On our democratic ship of state the determinations about the destinations of our collective journeys

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<sup>42</sup> Schudson is nevertheless correct in highlighting the important services that experts can provide democratic governance: 1) given their training, professional commitments and membership of a community of experts they are uniquely willing to speak truth to power; 2) they supply unique frames and clarifications for public debates making political decision-making more effective; and 3) provide timely diagnoses of problems in a potentially policy-friendly fashion (2006: 500-501).

can remain in democratic hands and while the knowledge about proper navigation and risks involved are an important aspect of this process, it does not negate the democratic authority involved in the authorization and decision-making.

## 7. Conclusion

This dissertation has argued that the problem with experts in democracy is best understood as a question of an independent standard of correctness provided by the institutionalized process of science which effectively restrains democratic government. The challenge of experts in politics does not necessarily lie with their position within the decision-making process but with the simple fact of their expertise. Their extensive possession of knowledge and the ability to provide reliable answers to newly raised questions is all that is needed in principle to provide democratic governance with this challenge.

Understood this way, it actually makes sense to talk of ‘truth’, even in politics, but if there is truth and if there are people – experts – who have a better claim at pointing out what is correct at a better rate of reliability than a layman has – as the second chapter has pointed out – then we reach the challenge of epistocracy. Once we accept that experts know better, what is to stop a slide toward an authoritarian cognitivism? And does not our extensive reliance on expert judgments, however beneficial and catastrophes-preventing they may be, already spell such a regime?

My main goal here was to demonstrate that democracy can successfully withstand these challenges without injury to its core principles of democratic fairness. Instead of denying the existence of the problem or defining it away through creative redefinitions of democratic concepts, I have suggested that expertise should be viewed as an institutional practice that need not subvert democratic rule if the process, through which it arrives at and promulgates its findings, maintains features that pay respect to the citizens. Broadly construed these have included the principles of transparency, publicity of their research, and a reflexive attitude toward public concerns.

I arrived at this resolution by drawing parallels between ‘expert review’ and judicial review. Just as judicial review, expert review also presents the self-governing public with constraints on its actions proclaimed by the unelected, inscrutable few. In both cases we accept as legitimate significant curbing of democratic decisions because of a standard of correctness lying outside of the process.

Both work as an ongoing process which in order to remain legitimate needs to take into account the views of the public. Despite its independence from the procedures, the expression of the standard of correctness cannot be made entirely independent from the opinions and values of the general public. This remains true with both the constitutional order of a democracy and the scientific explication of the true state of the world – both operate within a world of values and as such have to continually enter into dialogue with the prevailing views and opinions of the citizenry.

Unlike judicial review though, which only works after a democratic decision has been made, expert review actually functions in a continuous fashion, fine-tuning and adjusting the standard, responding to new facts and to new questions. But it would be a mistake to view it as supplying merely an input into political decision-making. Scientific findings can just as well impose constraints that effectively end a debate, reframe it or shut off avenues of action previously deemed tractable.

My account of expert review suggests that science and democracy can be made safe for each other. What is more, many standards and practices of scientific inquiry already fulfill the requirements leveled at expertise by the expectations of democratic fairness. The process through which we grant epistemic authority, the context which allows us to recognize expert trustworthiness and reliability, is already an integral part of scientific inquiry. However, a respect-worthy, democratized ‘expert review’ also entails a wider openness and responsiveness to the public. This could entail not only greater transparency of scientific operations, methodologies, and funding, wider policies of education towards a general scientific literacy, or open-access publishing of main scientific findings, but also an institutionalization of greater citizen engagement with complex governance of sciences in democracies. And while this work gestured toward a few proposals, the challenge of what this institutionalization of responsiveness is supposed to look like and how exactly the mutual consultations are to proceed still remains an open question.

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