Competence and Equality:

An Essay on Competence and the Right to Vote

By

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I declare that this dissertation contains no materials accepted for any other degrees in any other institutions; and that this dissertation contains no materials previously written and / or published by another person, except where appropriate acknowledgment is made in the form of bibliographical reference.

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Abstract

This thesis argues that (i) below a certain threshold of minimal competence, political equality provides conflicting considerations both for and against universal franchise including less than minimally competent citizens, while (ii) on or above the threshold of minimal competence, requirements of political quality and hence competence provide insufficient reasons against equal franchise in liberal democracies. This sharply contrasts with received views that competence-based exclusion and equality of the franchise are two different compromises struck between political equality and political quality.

In Part I, I address franchise restrictions below the competence threshold. In Chapter 1, I argue for an interpretation of the "all subjected principle" that *pro tanto* requires that those less-than-minimally competent should be enfranchised. Chapter 2 examines Thomas Christiano's *pro tanto* argument for excluding those less-than-minimally competent from the electorate. I show here that an account justifying the right to vote by interests grounded in minimal competence—the capacity to make moral judgments—can only argue that excluding the insufficiently competent is permissible, but not required. Chapter 3 criticizes a *pro tanto* argument requiring the enfranchisement of less-than-minimally competent citizens based on the expressive or symbolic significance of voting. I reconstruct several versions of the argument to show that the best version can only offer a relatively weak *pro tanto* case for inclusion, and even that case is in some doubt. Chapter 4 provides two *pro tanto* arguments for exclusion based on political equality as between citizens, on the one hand, and as between 'mere' citizens and their representatives, on the other. I argue that political equality requires us to avoid an excessive risk of votes not backed up by sufficiently independent voting-relevant judgments, which gives us *pro tanto* reasons to exclude those who are unable to form an independent judgment, and would serve as vehicles of someone else's electoral will. I argue,

though, for a rather permissive, socially embedded interpretation of what independence in moral judgment requires. Chapter 5 criticizes an external competence-based restriction on the franchise, showing that Jason Brennan's argument from a right against incompetent rule to an alleged right to competent voters is unsound.

In Part II, I justify equal voting power despite variations in voting competence above the threshold. Chapter 6 criticizes Thomas Christiano's argument for the same conclusion. I argue in this chapter that one of his arguments is necessary but insufficient to establish equal voting power, but the other one is incompatible with representative democracy. In Chapter 7, I present a novel account of equal voting power despite inequalities of competence. Instead of arguing that political equality is a constraint on the pursuit of substantive equality, I show that in liberal democracies, substantive requirements of equality and the requirement of competent government they trigger do not even conflict with political equality and equal voting power specifically. So, since political equality *pro tanto* requires equal voting power, and competence requirements do not conflict with this requirement, equal voting power is *all things considered* required despite variations in competence above the threshold.

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I've been waiting for several years for the joy of writing this section, and finally, the time has come to share my gratitude with all those who have helped me get here. So, please forgive me if it gets longer than usual.

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I would also like to thank Orsolya Reich and Anna Réz, in alphabetical order, for their (on average) decade-long friendship and philosophical companionship, both of which pre-date my studies at CEU. Had it not been for their influence, inspiration and faith in me, I'm not sure I would ever have turned into a philosopher. Even more important is the loving support I got from both of them to go through the most challenging and important decade in my life so far. Many thanks are due to Gábor Betegh, too, former head of CEU's Department of Philosophy, and former principal investigator of the Human Project, which hosted the best weekly reading group discussions during my years at CEU on a wide variety of topics in normative thinking. This reading group also gave me opportunities to receive ample feedback on my own work. Gábor's support had a huge part in forging me and several of my friends in and out of CEU's Department of Philosophy, among them Anna and Orsi, into a true intellectual community.

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Our weekly PhD progress Skype meetings with Orsi Reich and Tomi Szigeti surely played an important role in keeping work on my dissertation project regular—and something that I could actually think of as 'fun'. Several Friday evening conversations on our respective dissertations with my amazing colleague, Bea Vissy, also hugely contributed to the birth of this thesis. Not only did she fuel my work with great questions and challenges, but she also reminded me every time how enthusiastic I still am about this dissertation. Ágnes Makó and Péter Cserne supported me with invaluable friendship and advice also when I had to overcome the harder moments. Ági, with whom we are submitting our respective theses at

around the same time, has been a very close friend for almost half of my life, by now. So, she is best placed to remind me that no matter how important writing this dissertation has been, it is now time to move on to the next challenges.

I'm lucky enough to be surrounded by a great number of wonderful people—which means it's unlikely that I haven't missed out any of them who somehow contributed to this project. If you're the unlucky one, please forgive me and consider yourself included here.

Last but by no means least, my deepest gratitude goes to my Parents and Ray, who have given me the most support, encouragement and love during these years.

Budapest, 29 April 2016.

A. M.

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0. Introduction

0.1. The Asymmetry Puzzle: Introducing the Protagonists

Let me briefly introduce you Amy, Brad, Chris and David, all of them citizens of a liberal democracy. Amy is 5 years old. She is starting to get the difference between right and wrong, which clearly shows in her playground conflicts. Since she watches TV with her parents a lot, she is already developing some sympathies and aversions to some of the most well-known political figures of her country. Moreover, she has some quite firm views on what would serve her community better: for example, safer playgrounds and free after-school day care, where she could play together with her friend Jenny. Unfortunately, Amy's parents work overtime all the time, and can't afford to leave her in day care to play more with Jenny in the afternoon. But it is not for Amy to decide on the future of her community or the fate of politicians. Amy does not have the right to vote—and most of us think this is just alright.

Brad is Amy's father (or one of the fathers?—we don't know much more about the family). Sometimes he watches TV with Amy in the evening, and he knows quite well which politicians appeal to him, and which ones don't. As for his views on the right future of his community, he is pretty much in agreement with Amy. He would much prefer to live in a country where he could afford after-school care and leave Amy to play in the yard with her friends. True, his policy views are slightly more developed than Amy's: he thinks, for instance, that higher minimal wages and progressive income taxation would help achieve this. And he may be right or wrong about these. In any case, he would clearly see a country with more equal opportunities to access education as more just. However, unlike Amy, Brad can also play a minor role in navigating the future of his country, since he has the right to vote—and most of us think it would be an outrage if he did not.

Chris, Amy's second cousin, is 37 years old. He likes sitting in the garden, and enjoys sunsets. He has a deep, loving relationship with his parents, who take care of him. When Amy visits him, they laugh a lot together. Chris also likes watching TV, and has likes and dislikes for politicians. He also thinks his parents work very hard to take care of him, and he wishes they could relax more and spend less time working, when they are not taking care of him. Chris' parents explain to him that this is more or less what one of the candidates is promising to achieve, in the next elections. Chris is unfortunately severely mentally disabled—doctors say most of his cognitive skills are at the level of an 11-year-old child. I won't tell you if he has the right to vote or not. He knows, though, that most adults around him do have the vote: he understands that voting is something important, and that adult citizens are generally entitled to participate in this important event. Some liberal democracies treat Chris on a par with Brad, and others on a par with Amy.

Finally, here's David, Brad's elder brother. He has a PhD in political science, and he was so outstandingly talented that he went as far as Oxford to get it. He understands the nits and grits of campaign communication techniques just as well as the fine details of his home country's electoral system and procedures. Politics is truly his passion, so he spends the days reading and analyzing party programs, and starts checking the background of the candidates already a year before each election. Before his PhD, he did a first class honors in political philosophy, and accordingly, he has extremely finely argued views about the just distribution of resources, the restrictability of fundamental rights, and the way these can translate into policy. Needless to say, he has a vote, just like Brad.

Why should voting rights be distributed as they are in the above examples—or why should they be distributed in a different way? Whether or not you are a revisionist about the above distribution, your answer will have to reflect on the role of competence in the distribution of votes. This thesis engages in exactly this reflection.

In particular, this thesis provides a careful examination of, and a justification for, the following phenomenon that I will call the Asymmetry Puzzle. The Puzzle is generated by two opposing sets of intuitions. On the one hand, competence clearly has a role to play in the distribution of voting rights. At least very small children, like Amy, do not and should not be enfranchised because they would be, in some relevant sense, incompetent voters. People living with severe mental disabilities, like Chris above, are often analogously thought to be incompetent voters—and their alleged incompetence is a legal ground for disenfranchisement in several jurisdictions. There are rather firm intuitions that the lack of some kind of competence, or an insufficient level of competence, justifies at least a moral permission, but possibly also a moral requirement, that the incompetent (or insufficiently competent) not be enfranchised. It is especially intuitive that the exclusion of children from the electorate is not merely a tolerable loss, but it is part and parcel of the adequate functioning of liberal democracies.

At the same time, recent legal developments seem to challenge the disenfranchisement of adult citizens on grounds of incompetence. Notably, the *UN Convention on the Rights of Persons with Disabilities* requires signatory states to enfranchise adult citizens with all kinds of disabilities, including severe forms of mental disability, allowing them to fully participate in political decision-making on equal grounds with other citizens. And a growing number of states do enfranchise people living with severe mental disabilities. Intuitions seem to be more divided here. Some insist that members of this group, like Chris, should be enfranchised. But then how do we justify the relevant difference, from the perspective of enfranchisement, between children *simpliciter* and adults living with mental disabilities? Others may insist on the disenfranchisement of the latter group. Yet how do we explain *away*, then, the intuition that there is something objectionable about disenfranchising adult citizens due to their

incompetence? Whichever direction you choose, again, reflection on the role of competence in the distribution of voting rights is inevitable.

So, at least a minimal or threshold competence seems to be relevant for enfranchisement, one way or another, and we need to know much more about how it is relevant for the distribution of voting rights. This already calls for thorough normative analysis.

On the other hand, the relevance of competence to voting rights is more complex than the foregoing. Here is why. It is very intuitive to think that differences in the competence relevant to voting do not level out above the minimal or threshold level. Some people are better judges of principle, policy, or political character than others. Some are capable of more impartial judgment; others are better at moral, instrumental, or economic reasoning; yet others empathize better with people different from themselves and thus better understand their needs. Again, some are better than others at understanding government and the institutions and procedures through which individual votes are translated into actual political influence. If you compare Brad and David, whom we met above, they probably exhibit some of these relevant differences. David is arguably a much more competent voter than Brad. Yet it is a firm intuition that this difference in competence, or any above a certain threshold, should *not* matter for the purpose of distributing voting rights.

So, we encounter the following puzzle. Competence appears to be scalar. And it appears to matter for the distribution of voting rights. Yet voting rights should not be distributed in a scalar manner at all. Voting rights should *not* be distributed *at all* below a certain threshold, disregarding difference in the relevant kind of competence below the minimal threshold. This is an equal distribution. (I will refer to this distribution as *Non-scalar Disenfranchisement* later.) On the other side of the coin, above the minimal threshold, differences in the relevant kinds of competence do not seem to matter either. Everyone who is at least minimally

competent *should* be *equally* enfranchised: neither the number nor the weight of the votes citizens have should track variations in individual competence-levels. This is also an equal distribution. (I will refer to this as *Non-scalar Enfranchisement.*) In sum, intuitively, the distribution of votes should be binary rather than scalar, while it should track, in *some* sense, the distribution of a scalar rather than binary property (bundle). Competence is scalar, but franchise is binary. And this is puzzling.

The institutional set-up reflected in the Asymmetry Puzzle is one of less-than-universal suffrage due to differences in competence, but equal franchise despite differences in competence. This institutional arrangement either requires justification, or we should know on which side(s) of the threshold there is a need for reform, and what kind. While democratic theory so far has—albeit sparsely—tackled one of the two sides (see López-Guerra 2010 and 2014, Nussbaum 2009, Rehfeld 2011, Schrag 1975 and 2004, Fowler 2014 for the lower division of the puzzle; Mill 1991 and Estlund 2008 for the upper division), systematic exploration of both sides has been largely missing (Christiano 2008 being the only significant exploration of both sides so far, to the best of my knowledge).

One contribution of this thesis to democratic theory is to provide, to the best of my knowledge, the first systematic and comprehensive, book-length exploration of the Asymmetry Puzzle.

0.2. Some Terminology: Voting Rights, Voting Power, Restrictions, Competence

Before presenting the most important substantive and methodological contributions of this thesis to democratic theory and political philosophy more generally, it is helpful to briefly discuss some terminology that I apply throughout the coming chapters.

First, I use the expressions "*franchise," "suffrage," "voting rights," and "the right to vote"* interchangeably. By these, I mean an individual right to participate in political decision-

making by contributing to the selection of legislative representatives in a positively responsive procedure the result of which is binding. Let me elaborate on this focus by fencing it off from some closely related rights.

On the one hand, the present thesis focuses on the right to vote, but not on the right to stand for elections. Both rights are necessary in a liberal, representative democracy, yet competence has crucially different relevance for these two political participatory rights. I do not entirely ignore the right to stand for elections; at some places, my arguments positively assume its existence. At other places, I also comparatively comment on the role competence plays in assigning and distributing the right to vote as compared to the right to stand for elections, or even the supposed right to be a representative. Yet such comments aim to clarify only the account I give of the justifiability of competence-based restrictions on the right to vote. They do not add up to a comprehensive view on competence and the right to stand for elections.

On the other hand, I also contrast the right to vote with the right to participate in binding referenda. By referenda I mean procedures of direct political participation where voters contribute to the selection of a policy in a positively responsive procedure. While the similarities between elections and referenda are quite obvious, so should be the differences. Even though I side with those who think that voters' decisions in an elections should be primarily, or at least significantly, driven by the principles (and policies) supported by candidates (see, e.g., Christiano 1996), the principled or policy-based reasons resulting in a particular choice of candidates have no directly binding effect on candidates law-making. This is a standard feature of the franchise in liberal democracies, and yet it is all too often overlooked in political theory, with some notable exceptions (the most salient being Waldron 2009). Here, my previous point applies again: within the space of this dissertation, I do not offer a comprehensive account of competence and the right to initiate and participate in referenda. But I do compare, at some points, these rights with the right to vote. Suffice it to

say here that the competence requirements relevant to the right to initiate or participate in referenda or the right to stand for elections may arguably be higher than those applied to the right to vote. This intuition guides some of my arguments against competence-based restrictions on the right to vote, though.

Second, I should clarify what I mean by "*restrictions*" on the right to vote. I use this term very broadly to include legislative or judicial interferences with what is or appears to be an individual's right to vote. Competence-based restrictions are restrictions that are, or reasonably could be, justified by reference to the voters' inferior competence in comparison to that of other voters. Restrictions range from complete exclusion from the electorate (the typical case under a competence threshold, see Amy and Chris) to partially restricted rights, to the unequal distribution of rights (e.g., Mill's proposal of plural voting, or the two votes of those British subjects, before the Representation of the People Act of 1948, who were graduates of an Oxbridge or other qualifying university), to unequal voting power with equal rights (e.g., two citizens having the same number of votes, but in electoral districts with different populations). By voting power, I mean the sum of the products of the number of votes one has multiplied by their relative weight. So, whereas malapportionment cannot undermine the formally equal distribution of the rights themselves, it undermines equal voting power if one electoral district ends up bigger and another one smaller in terms of voting-eligible population, and both elect the same number of representatives. Accordingly, for the purposes of this thesis, not only limits to the universality, but also to the equality of the vote, count as restrictions, and so do both direct and indirect legislative and judicial restrictions.

Competence-based restrictions also vary, quite crucially for practical purposes, according to whether they are presumptive or test-based. Presumptive restrictions apply to individuals without any sort of competence-testing, and the presumption may be overruled automatically or based on testing. Children's voting rights are presumptive restricted, and the presumption is

lifted automatically with aging. In the pre-1960s Deep South, a presumptive restriction applied to all citizens, and it was lifted only once someone was considered sufficiently 'competent' based on literacy test results. Most severely mentally disabled people are presumed competent, but this presumption is often overruled in judicial proceedings, which also result in an exclusion from the electorate. There are lots of extremely important differences between these kinds of restrictions, and anyone who designs policy based on principled reasons in favor of any competence-based restrictions on the franchise should be mindful of these differences. Yet it is not my aim to make policy precise policy recommendations here. Therefore, I will set aside these practical considerations and concentrate instead on purely principled ones.

Finally and crucially, I would like to make some clarifications concerning the meaning of *"voting competence*", or, for the sake of brevity, *"competence"*. The diversity of the views about what constitutes the competence relevant to voting is, in fact, the greatest methodological difficulty this dissertation faces. There is no single debate on voting competence: rather, various authors implicitly or explicitly rely on various different meanings. For the purposes of this dissertation, it is important to observe, on the one hand, that any intuitive understanding of voting competence conceives of this competence as very complex. Constituents of voting competence include, first, dispositional capacities to acquire justified belief or knowledge about certain matters, as well as dispositional capacities to form judgments: logical, instrumental reasoning; and the capacity to interpret and apply moral principles—and even to act on these judgments (see, e.g. Rehfeld 2011, p 146). Second, voting competence seems to involve more than the mere presence of the above capacities: it also matters for competence how well these are used (see Christiano 2008), stably they are present (Clayton and Chan 2007, p. 543), and how independently one can use them (Fowler 2014, p. 101). Also, obviously, it matters whether one is willing or motivated to use the

relevant capacities (this figures largely in Brennan's [2011a] requirement of moral reasonableness). Finally, knowledge, moral and social scientific, also seems relevant to how competently one can or will vote (Brennan 2011ab, Caplan 2008).

I cope with this conceptual diversity in two ways. First, in critical discussions, I often accept, for the sake of the argument, the underlying conception of voting competence in a given account. In such cases, I intend to show that even if the conception of competence at hand were the right one, the conclusions of a particular theory would not follow from it, regarding the permissibility of exclusion or less severe restrictions. For instance, while I think Jason Brennan largely overestimates the significance of economic knowledge as a constituent of voting competence, I need not deny this in order to show some of the flaws in his argument for excluding incompetent voters. So, in such discussions, the diversity of competence-conceptions does not cause any methodological difficulties. Second, however, in other critical discussions and in positive argumentation, it is inevitable that I take a stance on what is the *function* of the right to vote in liberal democracies, and accordingly, how voters can fulfill this function. It is this normative understanding that also sheds light on which elements of competence are necessary and sufficient for voters to realize the ends that universal and equal franchise serves.

0.3. Substantive Contributions to the Problem of Quality and Equality: the Illusion of a Compromise

The problem of competent political participation in liberal democracies is all too often framed as if there were a necessary tension between the quality and equality of political decision-making. Competence-based restrictions on the franchise, on the one hand, are seen as compromising the underlying moral ideal of democracy: political equality. Resistance to competence-based restrictions, on the other hand, is sometimes seen as compromising the

underlying moral ideal of liberalism or liberal egalitarianism: substantive and equal liberties, as well as substantively equal opportunities for all. When decisions are not made by competent voters, or not sufficiently competent ones, or perhaps not the best ones, the quality of political decisions is thereby threatened. The Asymmetry Puzzle can thus be seen as a compromise between quality and equality—another example of the well-known idea that thorough-going egalitarian ideals and liberal requirements are at odds, and liberal democracies at best realize some sort of their compromise.

One major substantive contribution of this thesis to democratic theory is a much more complex understanding of the alleged conflict between quality and equality, and the way it reflects in the distribution of the franchise. In particular, I hope to show that reasons in favor of, as well as against, restrictions below a competence threshold are *both* ultimately justified by different, conflicting requirements of political equality. So, below the threshold, as it were, the normative conflict that is reflected in our divided intuitions about enfranchising children and the severely mentally disabled is a conflict *internal* to political equality. It is a mistake, I establish, to conceive of disenfranchisement below a minimal threshold of competence as an compromise between political equality and political quality—i.e., a value *external* to the former ideal.

On the one hand, political equality, through the principle of popular sovereignty, requires that all subject to the authority of the state, properly speaking, should also have the right to participate in the exercise of that authority. Depending on the interpretation of the "all subjected" condition, I argue, this may well *pro tanto* require that children like Amy and mentally disabled adults like Chris should also be enfranchised. Yet, on the other hand, I show that political equality also requires protective measures that ensure the equality of the vote between citizens. Among such measures are the ones aiming to reduce the risk of manipulated votes: if Amy cannot independently make judgments relevant to her vote, for

example, she is most likely to simply duplicate her parents' (Brad's) electoral will. The lack of an independent electoral will reflected in each vote is a problem for two reasons. First, as I show, it violates the equal franchise of third persons: those manipulating others have double the political influence as persons who do not manipulate others. Second, I argue, if there is an excessive number of manipulated votes within the electorate, then the electorate as a collective cannot properly control representatives—thus also compromising popular sovereignty, and through it, political equality as between representatives and the electorate. So, I argue, whether children and the mentally disabled should be excluded from the electorate depends on the balance of these considerations. Further, I show that symbolic or expressive considerations (Dworkin 2000, Kis 2003)—which I also regard as justified by political equality—do not provide, in themselves, very strong reasons to enfranchise minors and the mentally disabled—but they may distinguish between the justifiability of the exclusion of children and the mentally disabled.

This thesis also puts forward a novel kind of argument in favor of equal franchise despite competence differences, on or *above* the competence threshold. Again, the usual worry here is that the quality of decisions is compromised if less competent voters and more competent voters have an equal say. This concern is particularly weighty if we presume that the quality of political decisions is just as much a matter of right as their equality, whether quality entails competently made (Brennan 2011) or substantively right (Dworkin 2000) decisions. In response to this worry, political egalitarians have recently tried to show why the quality of political decisions should be compromised whenever it is in conflict with political equality (Kolodny 2014ab, Viehoff 2014). In contrast, I hope to show that liberal democracies effectively *avoid* such conflicts. I argue that institutional arrangements specific to liberal democracies—such as representative lawmaking and constitutional review mechanisms—ensure that political decisions in liberal democracies with equal franchise are as good as they

would be in liberal regimes with unequal franchise distributed in accordance with difference in competence. This is a further argument in support of liberal democratic arrangements: unlike undemocratic liberal, or illiberal democratic arrangements—if these conceptually make sense at all—liberal democracies allow for the realization of both the requirements of political equality and quality. My argument does not settle the conflict between these two sets of requirements in contexts where they arise—i.e., illiberal majoritarian politics, or undemocratic, illiberal arrangements. I do not take a stand on which one should prevail in such contexts. This chimes well with a conception of popular sovereignty which sees liberal egalitarian constitutionalism as a precondition of political equality (cf. Dworkin 1996).

All in all, this thesis argues that (i) below a certain threshold of competence, political equality provides reasons both for and against universal franchise including the incompetent, while (ii) on or above the threshold of minimal or sufficient competence, political quality provides insufficient reasons against equal franchise in liberal democracies.

0.4. Methodological Contributions: Internal v. External Restrictions, Expressivism, Independent Judgment

In addition to the substantive contributions to democratic theory outlined above, the present thesis also makes some methodological contributions which, I hope, generally allow for the more nuanced understanding of political rights and the justifiability of restricting them.

First, I distinguish between internal and external restrictions on political rights. The distinction reflects the assumption that the very justification of political rights also entails certain limits to these rights. I refer to restrictions which rely on these limits as *internal*, and I call all restrictions *external* if they are grounded by moral considerations independent from the justification of the right which they restrict. I believe this distinction is useful beyond the substantive theses defended in this dissertation. Internal restrictions can be justified, I argue,

in an error-theoretic manner. In other words, in these cases, it is enough to show that the right does not extend to the interests or freedoms that the restriction interferes with. It is not the case that a true restriction limits someone's *pro tanto* right—but then, strictly speaking, there is no restriction to justify. Internal restrictions are best suited to underlie permissible, but not required, restrictions. External restrictions, in contrast, pose more serious challenges: they interfere with *pro tanto* rights, and thus they do require a genuine justification—which may or may not exist. They are better suited to justify required restrictions on individual rights.

In this thesis, I use the internal-external distinction to interpret and defend Christiano's (2008) idea that minimal, below-threshold competence justifies internal restrictions. In other words, I interpret Christiano as claiming that children and those living with severe mental disabilities may be excluded from the electorate because they do not exhibit the characteristics which justify the assignment of political rights to individuals. I believe the analysis of competence-based restrictions below the threshold as internal is helpful in explaining intuitions in favor of the permissibility of excluding insufficiently competent individuals from the electorate, but it fails to account for the deontic quality of competence-based exclusions. Such exclusions, intuitively, are either required or prohibited—but not permitted.

Second, I explore the role *expressive or symbolic considerations* may play in the justification of the universality and equality of the right to vote. The findings of this inquiry, again, have repercussions beyond the substantive theses defended here. I argue, in particular, that symbolic or expressive reasons in favor of the existence or equality of a given right may well be *cancellable*. Proponents of such expressive or symbolic justifications have the burden of proof to show this is not the case; without getting this done, it is not clear if expressive justifications of rights even get off the ground. Further, assuming that they do get off the ground, I propose that expressive *pro tanto* considerations are relatively weak if they conflict with other kinds of *pro tanto* considerations. So, proponents of expressive *pro tanto* reasons

for the existence or equal distribution of a right are especially hard pressed to show that these considerations stand, all things considered. This should not be interpreted as an overall denial of the significance of expressive arguments, but rather as a systematic exploration that calls for much work to be done on expressive rights-justifications—though undeniably, the methodological findings presented here also show some of the inherent limits of such arguments.

Third, this thesis applies for the very first time, to the best of my knowledge, results from moral philosophy and epistemology concerning moral testimony and deference to the problem of manipulated votes in political philosophy. Beerbohm (2013) already makes use of intuitions about non-deference in moral judgments to others, and uses these intuitions to cash out conditions under which states make authoritative decisions in the name of their respective peoples. Moving beyond, this thesis relies on the methodological assumption that what counts as permissible moral deference is conditional on the function of moral judgments in a given moral or political practice. Accordingly, I develop here a view of moral independence adequate for assessing if someone makes a properly independent moral judgment for the purpose of voting in a principled way. Like the other methodological contributions outlined above, I believe this one also has broader relevance for political theory. Both the ethics and political philosophy of campaign regulations, for instance, may well deploy the account of independent moral judgment put forth here. Further, I hope that the broadly speaking functionalist approach to the permissibility of moral deference can be fruitfully developed further in moral philosophy and epistemology too.

0.5. The Structure of This Thesis

Finally, after summarizing the most important tenets that I argue for in this thesis, and what I view as the most significant contributions it makes to democratic theory, let me briefly provide a roadmap to the actual chapters in which these arguments are structured.

The thesis compromises two parts. Part I engages with the question as to whether voters who have less-than-minimal competence could or should be excluded from the electorate. Part II, in contrast, focuses on competence-based restrictions above the threshold.

Part I comprises Chapters 1–5. I lay the ground for my further arguments in Chapter 1, which aims to dispel two concerns: first, that competence-based restrictions on the franchise do not deserve specific philosophical treatment because they are merely a subcase of competence-based rights restrictions in general, which apply to liberal rights too; second, that the significance of the individual vote is so marginal that the normative weight attached to its restrictions is negligible. By the end of this chapter, you will hopefully be convinced that competence-based restrictions on the franchise deserve a specific treatment in political philosophy. Further, I present here at least one contingent *pro tanto* consideration in favor of exclusion, and another, principled one against exclusion based on popular sovereignty. I also present here an important problem regarding the interpretation of the "all subjected principle", a requirement of popular sovereignty.

Chapter 2 examines and defends Thomas Christiano's *pro tanto* argument for excluding those less-than-minimally competent from the electorate. I also outline here the general characteristics of internal restrictions, of which Christiano's is a paradigmatic example. Further, I show here why internal restrictions focusing on the individual significance of the right to vote can only argue that excluding the insufficiently competent is permissible, but not required. Chapter 3 criticizes a *pro tanto* argument against exclusion based on the expressive

or symbolic significance of voting. I reconstruct several versions of the argument to show that the best version can only offer a relatively weak *pro tanto* case for inclusion, and even that case is in some doubt. Chapter 4 provides two *pro tanto* arguments for exclusion based on political equality as between citizens, on the one hand, and as between 'mere' citizens and their representatives, on the other. I argue that political equality requires us to avoid an excessive risk of manipulated votes, and this gives us *pro tanto* reasons to exclude those who are unable to form an independent voting-relevant judgment, and would serve as vehicles of someone else's electoral will. Chapter 5 criticizes an external competence-based restriction on the franchise, showing that Jason Brennan's argument from a right against incompetent rule to an alleged right to competent voters is unsound. The conclusion I reach at this point is that political equality and popular sovereignty itself provides conflicting arguments for and against electoral exclusion below a certain competence-threshold.

Chapter 6 opens Part II, criticizing Thomas Christiano's two arguments for the equal voting power above minimal competence in the light of competence differences. I argue in this chapter that one of his arguments is necessary but insufficient to establish equal voting power, but the other one is incompatible with representative democracy. In Chapter 7, I argue that competent government as a necessary precondition for the realization of substantive equal rights does not necessitate any restrictions on equal voting rights. As I show, however, we can establish this without settling for the moral priority of political equality and the equality of voting power that it entails. Instead, we can show that in liberal democracies, it is unnecessary to restrict equal voting power so as to comply with the substantive requirements of equality—for the latter can be realized without such restrictions too. But if equal voting power should not be restricted, then it should be insisted on. Political equality, and the equal voting rights and power it entails, is a weighty moral requirement that cannot be unnecessarily restricted.

PART I:

EQUAL DISENFRANCHISEMENT BELOW THE THRESHOLD

1. Liberalism and Skepticism about Voting Competence

1.0. Introduction

Competence-based restrictions on the exercise of various individual rights abound, even in contemporary liberal democracies. Children do not have the same rights as adults, or at least they are severely restricted in exercising them: for example, they cannot sell a house on their own, even if they own it, and up to a certain age, they may not even co-sign a sales contract. If there is a medical reason for a child to undergo surgery, it is not the child, but the parent or caretaker who is empowered to give consent. By the same token, adults whom a court of law has declared legally incompetent due to some form of cognitive impairment often cannot exercise their property rights, or rights to physical self-determination, or their (some of their) rights to legal remedies—at least not without a legally competent guardian. While these practices may be challenged (and often are and should be), they all go to show that the competence-based restriction of *liberal* rights is a commonplace phenomenon. This should at least raises a methodological suspicion for a liberal political theorist: Is there a *distinct* question as to whether democratic rights can be restricted on grounds of incompetence? Is there not a single question, rather, as to whether rights in general or their exercise can be restricted based on the (counterfactually understood) right-holder's (actual) incompetence? I will refer to this methodological problem as the "distinctiveness concern".

The motivation for the distinctiveness concern is not purely theoretical: its intuitive plausibility is also fuelled by legal history. The institution of "legal incompetence" seems to be roughly as old as the very idea of individual rights, and throughout most of its history, it

was an all or nothing affair. That is to say, legal incompetence, until fairly recently, was considered domain-independent: the institution reflected a consensus that (a) there are some individual rights whose proper exercise requires competence, that (b) the lack of this competence is sufficient reason to restrict the exercise of the right, and finally but crucially, that (c) within this class of competence-dependent rights, one cannot be competent for the purpose of exercising one right, but not another.[1] For instance, you could not freely dispose over your property, but not have the right to cast a ballot for the President at the same time—or the other way round. In (not so) old time, you were either a competent rights-holder or not: no further distinctions could be made.

One aim of this chapter, accordingly, is to dispel the distinctiveness concern. I will reconstruct and criticize arguments which purport to show that the concern is real: the right way to justify competence-based restrictions on the right to vote, on these views, is to justify competence-based restrictions for liberal rights, and then show that democratic rights do not pose a distinct problem of competence at all. In contrast, I will show that given the very different nature and normative role of liberal and democratic rights, there is logical space for a distinct question of competence in the justification of competence-based restrictions on the right to vote specifically and independently of the justification of competence-based restrictions on liberal rights. The significance of this finding is both substantive and methodological. On the one hand, I intend to show that some potential justifications of the competence-based restriction of the franchise are substantively wrong, as they rely on a mistaken analogy between liberal and democratic rights. On the other hand, my critique will show that there is logical space for a plethora of further, distinctive arguments concerning the competence-based restrictions of specifically democratic rights—the most important of which will be examined in the further chapters.

[1] I do not need to take a stand here on whether *all* rights are in fact competence-dependent, or only some of them. My claims will be compatible with either of these possibilities.

Yet even if I manage to convince you that the competence-based restriction of voting rights is a distinct normative problem, you may well make a different blow, with no less skeptical inclinations about the project. To wit, you may object that although there is a distinct issue here, it is of extremely limited moral significance. The thrust of this skeptical move comes from the recognition that the individual exercise of the right to vote, unlike the individual exercise of liberal votes, is not very consequential at all. So, the objection goes, although there may be good reasons to restrict the exercise of the latter, there are hardly any good reasons to restrict the exercise of the former, on ground of incompetence. The other aim of this chapter is to very briefly fend off the attack of the skeptic from this second direction. I aim to show, accordingly, that there are good reasons to care about competence-based restrictions or their lack on the right to vote even if individual voting is as inconsequential as the objection claims.

Finally, in this chapter, I aim to defend one substantive *pro tanto* argument for the enfranchisement of those incompetent to exercise liberal rights. This argument relies on the all subjected principle, a requirement of popular sovereignty. I present two interpretations of this principle: a more restrictive one which counts against, and a more permissive one which counts in favor of enfranchising individuals who are not (yet) competent to exercise liberal rights. My aim is to show that we should accept the more permissive interpretation.

1.1. The Direct Liberal Unity Argument

1.1.1. Reconstructing the Argument

The most straightforward argument which supports the distinctiveness concern relies on the assumption that liberal and democratic rights have the same justification, which in turn relies on one basic ‘superright’ to self-determination. I will refer to this argument as the Direct Liberal Unity Argument because it aims to establish a direct link between competence-based

restrictions on liberal and democratic rights through their allegedly shared justification. Let us see the outline of the argument:

> (P1) An individual's right to self-determination justifies her liberal and democratic rights.
>
> (P2) Only those who are competent to exercise self-determination have a right to self-determination.
>
> (C1, from P1 and P2) Only those who are competent to exercise self-determination should have both liberal and democratic rights.
>
> (C2, from C1) Those who are not competent to be subjects of liberal rights are not competent to be subjects of democratic rights either.

One way to cash out the idea behind (P1) is nicely captured by Thomas Christiano's (1996) reconstruction (though Christiano himself does not subscribe to the argument):

> […] when I participate in making the laws I directly express my will concerning the laws I will live under. Thus when I vote for a law, I express my will in favor of that law. When I live under laws for which I have voted, then I have my own will as a rule inasmuch as my participation contributes to the making of the law. (p. 24)

The assumption supporting (P1), on this reconstruction, is that the exercise of democratic rights, and the right to vote specifically, are just as much aspects of exercising individual autonomy as the exercise of liberal rights. What you do with your property—how you invest it, whether you keep it or alienate it etc.—should be a matter of your free choice, and so should it be whom you choose to represent you in the legislature (in the typical cases of voting), or what laws you choose to live under (in less typical cases of referenda).

1.1.2. Why (P1) is false

Yet the justificatory unity of liberal and democratic rights, based on self-determination or autonomy, seems unconvincing for multiple reasons. Let me start with the reasons that appear most convincing, yet which end up less convincing upon detailed scrutiny.

The Incompatibility/Insufficiency Dilemma. You may observe, a right to self-determination is insufficient to justify the right to vote. Voting is a type of collective action, such that your vote, in all probability, will not determine the collective decision at all (Christiano 1996, pp. 24–25). This observation gives rise to at least two concerns. On the one hand, if democratic rights are meant to ensure self-determination, they should ensure the self-determination of all, not only some—namely, the winners. (This is what Christiano calls the "incompatibility problem", see ibid., p. 25).[2] On the other hand, liberal rights typically protect a sphere of action in which your action as a right-holder can make a significant difference to the realization of your conception of the good, independently of other individual right-holders' actions. In contrast, exercising the right to vote in order to make a significant difference to the realization of your conception of the good seems a hopeless enterprise. The marginal contribution of individual votes is well-known (the *locus classicus* being, probably, Parfit 1984, pp. 73–74; see also Kutz 2000, pp. 132ff), and hoping that others will vote for the same candidates or policies as you do hardly qualifies as an instance of self-determination at all. These two points may be sharpened by articulating them as a dilemma: the right to vote is either sufficient for self-determination, or it is not. If it is, it cannot be a means of self-determination for *everyone*, and thus conflicts with the liberal commitment to an equal right to self-determination which even the toughest right-libertarians would not want to deny. Yet if a

[2] This objection presupposes, though, that the voting system used for collective decision-making exhibits the feature of non-dictatorship: no individual vote can change the outcome of the collective decision-making *regardless* of how others vote. Thus, the incompatibility objection arises not for voting in general, but for majoritarian, democratic decision-making in particular. For the non-dictatorship condition, see Arrow (1963), pp. 30–31.

voting system ensures the equality of the right to self-determination (by ensuring non-dictatorship), the right to vote is no longer sufficient for *anyone*'s self-determination (see Christiano 1996, p. 19). Call this the Incompatibility/Insufficiency Dilemma.

The second horn of the dilemma, however, may not be as fatal as it seems. The right to self-determination, after all, does not consist in a right to *successful* self-determination, regardless of other individuals' actions or omissions. Consider a classical example. Operating a thriving enterprise, and thus achieving financial independence may form part of my conception of the good. And liberal rights guarantee my opportunity to *pursue* that conception of the good. But they are no guarantees for success. Others, smarter and more creative, may appear on the market, and may even drive my enterprise out of the market entirely if I cannot successfully compete. So, whether my conception of the good gets realized, or I go bankrupt instead, hugely depends on others' decisions too, and not only on mine. So, a right doesn't always provide a significant opportunity to realize my life plan or conception of the good. Moreover, others' rights don't necessarily guarantee co-realizable aims. E.g., two individuals' life plans may be very similar: they both want successful businesses, both in the same area, and both want to run a vegan low fat donut place to cater to a local hipster audience. Both have liberal rights which entitle them to own and manage property, and initiate and run an enterprise. But it is possible that unless they distinguish themselves in some other way, they can't both run a successful company in this case, and thus it would be strange to say that they have a right to a successful business. Rather, they have co-exercisable rights in property which are necessary resources even to attempt to realize their respective life plans. Liberal rights are not entitlements to *successful* self-determination, but only a necessary set of means of it; except if self-determination is understood in such a limited sense that its success is conceptually excluded to depend on any external circumstances or anyone else's action but the right-holder's. In either case, political rights could as well qualify: not as rights to the successful

determination of democratic decisions, but as rights to contribute to the determination of the outcomes.

So, the Incompatibility/Insufficiency Dilemma does not constitute a sound objection to the plausibility of (P1) in the Direct Liberal Unity Argument. The Insufficiency Horn of the dilemma is a bullet that everyone has to bite. Liberal rights, used in a society, are no magic wands: even if competently exercised, whether their use is conducive to the realization of your life plan depends not only on natural luck but also on how others exercise their own liberal rights. Therefore, the fact that the same is true about democratic rights goes no way to show that democratic rights are not justified by the right to self-determination. We need a different objection to (P1) in the Direct Liberal Unity Argument.

The Exercise of Political Rights is Functionally Distinct from Self-Determination, and it is an Impermissible Means Thereof. As a second attempt, it is more plausible to object not that the right to vote stops short of being a means of self-determination—but rather that its exercise consists in something entirely different from self-determination. There are at least two versions of this objection to (P1).

One version of the objection relies on the assumption that exercising the right to vote is a form of exercising *political authority.* This is not just to say that voting affects others *too*—which would be true of virtually all decisions, individual or collective, that we make or participate in making. We live in social worlds, and our actions—or omissions—almost inevitably have an effect, sometimes a significant one, on others' lives as well. Therefore, an exercise of a right cannot fail to qualify as an instance of self-determination on account that it affects how successfully other individuals realize their respective conceptions of the good by the exercise of their liberal rights.

The point this version of the objection makes, instead, is that it is altogether illegitimate to exercise political authority, or to participate in its exercise as a means of self-determination. The right to self-determination consists, in effect, in a right to the means to realize your own conception of the good irrespective of the substantive content of this conception, within limits which allow others to have equal means to realize theirs (the Requirement of Equality). But political decision-making is not a means for, but a constraint on and a specification of, your right to realize your conception of the good. Political decision-making specifies your right to self-determination and the rights derived from it, and it settles disputes about what the Requirement of Equality consists in. In other words, the normative role of political decision-making, unlike that of the market, is not to provide a terrain of competition between different conceptions of the good. It is instead a terrain to settle controversy about conceptions of justice. So, political authority should not be used as a means of self-determination at all. This version of the objection focuses on the *content* or *function* of the right self-determination, and observes that exercising political authority over others—i.e., realizing one's life plan by issuing or participating in issuing authoritative decisions on others' rights and obligations—is not included in this content, and serves an entirely different normative function.[3]

There is a second version of this objection, though, which focuses on the permissible *means* of self-determination, rather than what function it could permissibly serve. This version is historically more popular: liberal thinkers have raised it since John Stuart Mill against treating voting as a means of self-determination. The key assumption in this version is that the

[3] The claim that taking away someone's vote does not protect them implicitly relies, I believe, on this insight (see, e.g., Verdes 2010, p. 101). Of course, this claim is true—but I am afraid it is also largely irrelevant to the debate. Liberal rights are, indeed, often restricted on grounds of insufficient competence partly on the assumption that those incompetent to exercise liberal rights are unable to use them well enough to protect their very own interests (or conceptions of the good, if they can form one). So, proponents of the claim want to suggest, given that the exercise of political rights is not an aspect of self-determination, disenfranchisement cannot be required in order to protect the subject of voting rights. So far so good—but, unfortunately, since voting is an exercise of political authority, it follows that if the aim of disenfranchisement if protective, the relevant question is whether it is required to protect *others*, and not whether it protects the subject of voting rights.

exercise of political authority is typically feasible only if it is backed up by coercive acts, or at least threats of coercion. But you have no right derived from a right to self-determination to exercise, or participate in exercising, coercion over others.[4]

You may criticize this version of the objection by insisting that coercing others is justified if and only if it serves the right aims—protecting and promoting equal rights—and it is limited by the right restrictions—viz., those imposed by individuals' rights. For all this, it would be possible to formulate a *conditional* right to rule: as a first (extremely vague) approximation, you have a right to exercise coercion as long as it is done in the right way. There is a very obvious problem with this first approximation, though: if you exercise it, others cannot. Rights, as we have seen, should be equally exercisable.

You may try to argue, instead, that at least you have the right, for example, to participate in an equally weighted lottery whose winner is entitled to exercise coercion as long as it is done in the right way, maybe for a limited amount of time. But liberals often claim that even this cannot stand. It is not only that you do not have a right to exercise coercion on *unequal* terms, you simply do not have *any right* to exercise coercion at all (Mill 1991; Wall 2007, p. 419).

These two versions of the objection have very different conclusions: one only denies that you have a right by self-determination to exercise political authority, the other one denies that you have any right to exercise coercion. If either version of the objection is right—and in my view, both are—, then it is false that that your right to self-determination justifies your right to democratic participation. Thus, (P1) of the Direct Liberal Unity Argument is false, and the argument is unsound. And, to finally turn back to our topic, this has major consequences for the justification of competence-based restrictions of the franchise.

[4] Notice that neither the authority-based, nor the coercion-based version of the objection is necessarily anarchist in its conclusions. Neither denies, taken in itself, that there are good (moral) reasons for establishing (coercive) political authority, and that individuals subject to that authority should share in its exercise. They only deny that such reasons are grounded in the right to self-determination.

The Direct Liberal Unity Argument thus gives no support to the idea that individuals' democratic rights may be restricted the same way as their liberal rights, on account of an incompetence relevant to self-determination. Individuals are intuitively considered competent with regard to their self-determination, or the pursuit of their conception of the good, if they have an ability to form and revise such a conception; if they have sufficient self-knowledge concerning their own interests; and if they have a capacity to engage in instrumental reasoning. It is not necessary for us to have a complete analysis of the content of this competence at hand. On the one hand, I take the previous elements to be fairly minimal and consensual among the potential elements of competence with regard to self-determination. On the other hand, they are sufficient to show that some elements are irrelevant to the competent exercise of the right to vote once we see, as I hope to have shown above, that this right is not a morally adequate means to exercise self-determination. For example, it is unclear how far self-knowledge regarding your interests is relevant to how competently you exercise the right to vote. This domain of self-knowledge is indispensable to forming a systematic conception of the good, but it may not be indispensable to forming a conception of justice.[5]

This critique of the Direct Liberal Unity Argument stops short of making any positive claims about whether or not competence-based restrictions on the right to vote are justified. It merely serves to block one particular, influential justification. The significance of this critique is threefold. First, it shows a particular account of competence-based restrictions on the franchise, extremely popular and inherent in Western legal tradition, to be substantively wrong. Second, as a result, it helps establish the methodological legitimacy of a discussion of competence-based restrictions which focuses specifically on the right to vote, without engagement with the justification of similar restrictions on other, liberal rights. Third, this

[5] It is plausible to assume, though, that having a better understanding of your own interests may help you to overcome or attenuate some of your cognitive biases about justice (cf. Christiano's [2008] discussion of the interest in correcting one's judgment, pp. 92–93, 139–141). So, this kind of knowledge might help to increase the competence relevant to the right to vote, yet it does not seem essential to it.

critique also imposes substantive constraints on further investigations: the right justification, or justifications, of competence-based restrictions on the franchise must take into account, or at least may not contradict, the assumption that the right to vote is not a means of self-determination, but a means of settling disputes between controversial conceptions of justice.

1.1.3. The Objection from the Unity of Practical Rational Capacities

You may object that my conclusions above do not follow from my critique. I only established, you may say, that the fine-grained capacities necessary for competent self-determination, on the one hand, and the competent exercise of political authority including voting, on the other, are different. But this is irrelevant. I made a mistake, you may say, in the individuation of the relevant capacities. It is implausible to assume, for example, that someone has a fine-grained capacity to form a conception of the good, but at the same time lack a fine-grained capacity to form a conception of justice. The relevant capacities are coarse grained: practical rationality (or 'practical agency', if you like) is a single supercapacity, you either have it over all possible domains, or you do not have it at all. It is either conceptually impossible or psychologically implausible to assume that one can have strictly domain-dependent elements of it. So, while liberal and democratic rights do not have the same justification, they both presuppose that the right holder has the same overall set of capacities that qualify her as practically rational—or so the objection goes. I will refer to this objection as the Unity Objection.

If the objection went through, my substantive finding in the previous section would still stand, but its significance would be undermined. The right to vote is not justified by a right to self-determination, but why does that matter for competence as long as liberal and democratic rights rely on the very same coarsely individuated elements of competence? Further, my methodological conclusion that it makes sense to talk specifically about the competence relevant to the right to vote would also be refuted, were the objection to stand.

Something like the Unity Objection is formulated by Joanne C. Lau (2012), who refers to a principle she formulates as "the Argument from Domains", and applies it to the case of underage citizens:

> Inter-domains consistency (the Argument from Domains): if we recognize children's competences in other fields of the law then we should recognize children's competences as voting agents. (p. 866) [6]

This principle assumes exactly what the Unity Objection puts forth: legal competence must be one and the same for the purpose of all rights and obligations.[7] Competence is defined minimalistically: it consists in the capacity to understand the nature of one's action in question—e.g., voting, committing a crime, entering a contract—, the consequences of one's action, the volitional capacity to decide between different courses of action, presumably appreciating reasons for and against them (e.g., Lau 2012, p. 867; Munn 2012, p.154). In short, this is what rational practical agency requires.

Assume, further, that there is no reason to require *more* in terms of competence than rational practical agency to be a competent subject of the right to vote. Just as much we do not require liberal right holders to make *good* decisions within the limits of the rights they hold, we

[6] Munn (2012) argues, in a similar fashion, that there is sufficient similarity between the criteria of the agential capacities required by criminal responsibility and political participation so as to consider them aspects of one and the same kind of competence:

> A critic [….] may say that the different ages at which criminal and participatory capacity are conferred are justifiable because the relevant capacities are sufficiently distinct in these fields. I do not think this objection can be sustained. In each of the cases, the ability being tested shares a number of characteristics. Each requires knowledge of the nature of the action in question, each requires an understanding of the consequences of engaging in that action, and each requires the demonstration of the ability to make a meaningful choice regarding the taking of the action. […] I acknowledge that there are relevant dissimilarities in the proof requirements envisaged in each of these realms, but these are both comparatively minor differences, and differences of degree rather than kind, such that the requirements of each remain similar, and differences arise only in how these capacities are shown. (pp. 147–148.)

[7] Lau (2012) acknowledges that we may have practical reasons to set the bar of competence higher in some fields of the law but not in others—yet this would not undermine the case for a *principled* unity of competence (see p. 866). Even if legal competence is one in kind, we may want to test it more rigorously in some domains (e.g., for the purpose of criminal liability) than others, and we may apply different presumptions of competence or incompetence in different fields.

should not require voters to make *just* decisions within the limits of their democratic rights. We should be satisfied that they *can* make good or just decisions, respectively.

However, the disunity of practical reason is neither conceptually impossible nor psychologically implausible. Conceptually, there is no contradiction in assuming that some individuals may be capable of responding to some kinds of reasons but not others—even within the realm of practical reasons. Practical reasoning for your own good is notably different from moral reasoning. The former may only require that you understand your own conception of the good (aims, goals, interests etc.) as well as how exercising you liberal rights helps you realize it. Moral reasoning, in contrast, also requires an ability to respond to others' interests by understanding what they are and considering them in light of (at least rudimentary) moral principles. Applying the general terms "reason-responsiveness" or "practical agency" is helpful in pointing out the similarities between these two realms of practical reason, but it also unhelpfully veils the no less significant differences which explain the conceptual possibility of having one but not the other.

The disunity of practical reason is also a psychologically plausible phenomenon. First, some of the Rawlsian burdens of judgment may also be interpreted as supporting this point (Rawls 1993). Your cognitive biases are, in part, fuelled by your own interests and conception of the good (Christiano 2008). The clearer idea you have about your own interests, the more likely it is that you may *not* be able to see other people's interests for what they are. In other words, at least in this regard, the more competent you are as a practical agent in realizing your own good, the less competent you may be as a moral and political agent. No doubt in other respects, the two subsets of competence—the one relevant for liberal rights, and the other relevant for the franchise—may help rather than hinder each other. Their interaction is certainly a complex psychological matter involving lots of contingencies that vary from person to person.

The foregoing is not to deny that there is a non-empty intersection between the elements of competence relevant to liberal rights, and those relevant to the right to vote. Both, for instance, may have among their constituents the capacity to differentiate, to some extent, between trustworthy and untrustworthy representative agents. Representation is an important way to exercise both liberal and democratic rights in a complex society characterized by a high level of division of labor. As for your liberal rights, you may exercise them by delegating the exercise of some of your rights to your stock broker who manages your pension savings, or your lawyer who negotiates and prepares contracts for you. As for democratic rights, liberal democracies are representative democracies, where you typically exercise your participatory rights by electing representatives.[8] In both cases, the competent exercise of your rights may require you to distinguish general psychological features of your representative. Furthermore, the capacity to engage in instrumental reasoning may be relevant to the competent exercise of both liberal and democratic rights. Whether it comes to individual or social aims, you are hardly in a position to exercise them efficiently if you are unable to understand and engage in means-ends reasoning.

Yet all I wanted to show is that there is no self-evident plausibility to the claim that whenever the self-regarding aspect of practically rational agency is present, and hence the agent is competent for the purpose of exercising liberal rights, then the other-regarding aspect of practically rational agency is also present, and hence the agent is competent for the purpose of exercising the right to vote.

The main problem with the Unity Objection is that it fails to explain why the coarse-gained, and not the fine-grained, individuation of practical rational competence should matter for

[8] Both in the private and the political context, the personal character of the representative may be more or less important in making the right choice. E.g., you may turn to a law firm, or an attorney's private practice, depending on the structure of the market and your own choice—and you may vote for party lists or individual candidates, depending on the electoral system. This does not undermine my point above.

enfranchisement. As far as descriptive metaphysics goes, both kinds of individuation seem just as good as the other one: they reveal something important about the unity and disunity of practical rationality, respectively. Thus the relevant question is *not* this: Which one is the more adequate *description* of practical rational competence? Both are adequate, on different levels of analysis. Instead, the relevant question is this: Which individuation of competence *should* we consider for the purpose of granting or restricting rights? But this is not a question of descriptive metaphysics—it is a question of substantive normative philosophy. The answer depends on which level of analysis is relevant to the justification of the right to vote: general practical rational competence, or something more specific? In fact, I have already taken up this issue above, in Section 1.1.2, where I showed that the more specific competence associated with moral agency is the one that is relevant, given that exercising the right to vote entails exercising political authority over others. Consequently, even if the competences required for the exercise of liberal and democratic rights have a non-empty intersection, or if, coarsely individuated, they are actually the same, this does *not* entail that merely the presence or absence of one and the same set of coarsely individuated, basic practical capacities determines whether someone is competent to exercise both liberal and democratic rights.

1.1.4. The Limits of the Direct Liberal Unity Argument

Finally, assuming for the sake of the argument that (P1) is true, I would like to point out another limitation of the Direct Liberal Unity Argument. Namely, that it is invalid. Let me restate the argument, for convenience:

> (P1) An individual's right to self-determination justifies her liberal and democratic rights.
>
> (P2) Only those who are competent to exercise self-determination have a right to self-determination.

(C1, from P1 and P2) Only those who are competent to exercise self-determination should have both liberal and democratic rights.

(C2, from C1) Those who are not competent to be subjects of liberal rights are not competent to be subjects of democratic rights either.

The premise I put under detailed scrutiny, (P1), identifies a sufficient justificatory condition for liberal and democratic rights. However, the conclusion drawn immediately from (P1), in conjunction with (P2), specifies a necessary condition for holding liberal and democratic rights. This inference is logically invalid. Thus, even if (P1) were true, the argument would only go as far as to show that one particular justification for granting individuals democratic rights—perhaps the dominant or core justification—does not apply to those who are not competent to exercise self-determination. In other words, assuming, *arguendo*, that the premises are true, the argument would only establishes the *pro tanto* permissibility of restricting the right to vote on the basis of incompetence. Further premises would be necessary to conclude even as much as the all-things-considered permissibility of restrictions, let alone a requirement to the effect that incompetent individuals' right to vote should be restricted.

1.2. The Indirect Liberal Unity Argument

1.2.1. The All Subjected Principle

Another argument may preserve a link between the competence-based restrictions on liberal rights, on the other hand, and the right to vote, on the other, without assuming that either their immediate justification or the coarse-grained elements of competence they require is one and the same. The Indirect Liberal Unity Argument, as I will refer to it, tries to establish instead that there is sufficient reason for competence-based restrictions on the right to vote to track like restrictions on liberal rights.

The Indirect Liberal Unity Argument crucially relies on the All Subjected Principle (ASP), a liberal or egalitarian principle which regulates membership in the democratic demos. The argument goes as follows:

> (P1) [*ASP*]: Those justifiably subject to political authority and those who participate in its exercise should be coextensive.
>
> (P2) There is an independent justification for the competence-based restriction of liberal rights.
>
> (P3) Those whose liberal rights have been justifiably restricted on account of incompetence are not subject to political authority. [9]
>
> (C) Whenever liberal rights are restricted because of competence, voting rights should also be restricted.

The argument relies on an independent account of competence-based restrictions on liberal rights, and a broad understanding of "liberal rights" which includes non-basic rights (e.g., to bind yourself by signing a contract, or by marriage etc.) that are derived from basic liberal rights. The crucial move in the argument is (P3): why is that those whose liberal rights have been restricted on account of incompetence are *not* subject to political authority?

(P3) should be at least controversial. As Clayton and Chan (2006, p. 541) point out, there are numerous individuals that are subject to the law of a given country, but intuitively rightly do not have a right to vote there: think of children, tourists, temporary residents etc. Citizens may be subject to law in the sense that (1) they can exercise the rights and execute the obligations they have by law, (2) if they do not, the state may legitimately impose some consequences on

[9] I added (P2), as well as the qualification "justifiably" to (P1) and (P3), to avoid the objection that the argument creates perverse incentives. Otherwise, the argument would insist on a requirement to disenfranchise those whose liberal rights are restricted for whatever reason, justly or unjustly: this is because popular sovereignty does not merely permit, but it also requires, the disenfranchisement of everyone who is not subject to the law, properly speaking. But this means that if someone is unjustly restricted in their exercise of liberal rights, a further injustice would be required in the form of disenfranchising them, if the scope of the argument were not delimited by (P2) and the qualifications in (P1) and (P3).

them; and (3) whether they can exercise them or not, the law still determines their rights and obligations. So, how should we understand (P3)?

The analysis of Clayton and Chan points to a need to distinguish between different senses in which one can be subject to law. Since these different senses may not be coextensive at all, the all subjected principle as a requirement of popular sovereignty may yield different conclusions regarding competence-based restrictions on the different interpretations. I will distinguish here two interpretations: the Restrictive Interpretation relies on the intuition that is captured by point (1) above; the Permissive Interpretation builds on point (3) above.

I do not think there is any plausible interpretation of the all subjected principle that can rely on point (2). States, I believe, may also legitimately impose some consequences (even coercively) on individuals who are not members of the political community, or who are members of the political community, but are not under the normative authority of the state (e.g., children). Law enforcement, even if purely strategic, involves coercion or threats of coercion. So, of course these state actions should meet a very high bar of justification. But although any such imposition obviously calls for moral justification, this justification may be met without extending the franchise to those subject to these impositions (see also Miklósi 2012, p. 484). They may have no rightful claim to participate in decisions affecting these impositions.[10] This is why I will concentrate on (1) and (3).

All arguments from the ASP do not only permit, but also require restrictions on the franchise. This is because (P1) relies on a requirement of popular sovereignty, which not only requires

[10] Tourists, temporary residents etc. still pose a problem to the ASP, since they are (at least typically) competent adults, and hence incompetence does not block the state to assume *authority* over them. I need not solve this problem in order to make the argument above from the ASP sound. Let me briefly note that restrictions on the right to vote are quite likely to be justified by different reasons, depending on the particular classes of individuals whose lack of franchise is concerned. Permanent residence or citizenship may still be necessary conditions for enfranchisement for reasons that are independent from state authority (in this case, (P1) needs to be reformulated to identify only a necessary condition but not a sufficient one for enfranchisement), or alternatively, there might be an independent reason to explain why tourists and temporary residents are not subject to the authority of the law and yet still seem to be treated accordingly.

that everyone who is subject to a given political authority should have a right to participate in its exercise, but also that *no-one* who is *not* subject to a particular political authority should have such a right. While some authors derive the requirement of popular sovereignty from the individual right to self-determination (natural liberty) (Hobbes and Locke arguably belong here, cf. Morris 2000), others derive it from the requirement of equal treatment, as an aspect of non-office-holding citizens' exercise of political authority as equals with office-holding citizens (see, e.g., Kis 2006; for the related concept of 'vertical political equality', see Dworkin 2000, pp. 194ff). Although I find equality-based justifications superior—and this will have a role in later chapters—, we need not make a decision at this point on the ultimate justification of popular sovereignty to conclude that both the reasons of inclusion and reasons of exclusion it grounds take the form of requirements, and not mere permissions. This makes it especially important to interpret ASP the right way: if we choose an unduly exclusive interpretation, those who are found not to be subject to the law, properly speaking, we mistakenly conclude that they not only may be excluded, but also should be excluded. Let me spell out and evaluate, then, the two competing interpretations.

1.2.2. An Argument for (P3): The Restrictive Interpretation

The Restrictive Interpretation is the one that supports (P3). It relies on the intuition that those who are incompetent to exercise liberal rights are not, strictly speaking, full-fledged persons.[11] That is why they do not even have rights, strictly speaking, as full-fledged persons do (cf., also, Goodin and Gibson 1997). For instance, states assign the exercise of what seem to be their rights and the responsibility to comply with what seem to be their obligations to persons who are competent to do so (e.g., parents and guardians). States, in even more radical cases of

[11] Cf. Christiano (1996): "..being free implies that one is capable of making choices. Someone who is comatose or deeply mentally disabled is not a free human being" (p. 17). Although Christiano talks here about freedom, he does so in the context of individual self-government or self-determination. Hence I hope it is fair to interpret him as saying here that said qualities undermine one's status as a right holder, regarding liberal rights.

strategic management, may even subject incompetent individuals to medical treatment (in the case of severely mentally disabled adults) or purely reformative treatment (in the case of very young juvenile delinquents who are considered by the state morally incompetent), assuming a lack of self-determination rights on their part.[12]

The Restrictive Interpretation of ASP, quite harshly, views those human individuals incompetent to exercise their rights—children, adults living with severe mental disabilities—on a par with non-human animals, as far as 'subjection to the law' is considered. Incompetent human individuals, this interpretation acknowledges, do have interests worthy of moral protection. And so do non-human animals. The law protects the interests of both incompetent humans and non-human animals, this interpretation insists. It is just that the interests of incompetent human individuals, for whatever reason, are protected by maintaining institutional structures that appear to be the rights of incompetent human beings, and by assigning these 'pseudo-rights' to competent human beings. Hence incompetent human individuals are not really subject to the law, properly speaking, just as much as non-human animals are not. Subjection to law is only an institutional illusion created to serve their interests. This is why the ASP is triggered in these cases to require *exclusion*, and not inclusion, just as in the case of non-human animals. Everyone who is not subject to the law, properly speaking, should be excluded from the electorate: and this applies, on the Restrictive Interpretation, to incompetent human individuals too. So, this makes (P3) true—or so it seems for now.

However, even if the Indirect Liberal Unity Argument from the ASP were sound—though I hope to show soon that it is not—, on the Restrictive Interpretation, it might have a considerably limited scope. First of all, the argument relies on the assumption that liberal

[12] These treatments may also be justified if self-determination is granted, but restricted in order to protect others' rights. I am not having such cases in mind.

rights *may* be justifiably restricted on the basis of incompetence. Whereas I do not wish to take a stand on this question for the purposes of the present thesis, let me observe that this is certainly not in line with the assumptions conveyed by the recent evolution of legal history. The *UN Convention on the Rights of Persons with Disabilities* is firmly against legal incapacitation with regard to liberal rights (among others),[13] and advocates for supported decision-making instead,[14] as far as those adult individuals are concerned whose rights would be restricted on account of incompetence. If there is any reason to trust legal history as a source of intuitions for the philosophical analysis of the reasons for and against restricting rights, this trend should be of interest to philosophers too. If there is an overwhelming case for treating even adults with, say, extreme cognitive disabilities as competent to exercise liberal rights, with or without the support of others, then they are indeed subject to the law in the proper sense even according to the Restrictive Interpretation of ASP. So, the case for restricting their franchise collapses accordingly.

Second, the argument from ASP can conclude to a full-blown exclusion from the franchise only if competence-based restrictions on liberal rights are 'umbrella restrictions', i.e., they cover all the individuals' liberal rights. Guardianship used to be that way; the legally incapacitated lost all legal capacity domain-independently, with regard to all their rights. Yet, again, this is not necessarily the case anymore: even in numerous jurisdiction where placing the legally incapacitated under guardianship is a standard practice, the loss of legal capacity may be domain-specific. For instance, individuals may lose legal capacity to bind themselves by contract that would impose duties on them, but not to sign contracts that would extend their contractual rights, or to give consent to medical procedures performed on them.[15] In such

[13] "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life." (Article 12, S. 2 of the Convention)
[14] "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity." (Article 12, S. 3 of the Convention)
[15] See, e.g. Hungarian Civil Code, Sec. 2:23 Para. 2, Sec. 2:26.

cases, even according to the Restrictive Interpretative, individuals may not be properly subject to some domains of law, but they are properly subject to some others. This may also hold for children who gradually acquire authorization to exercise their rights in different domains of law, as they age. Consequently, in such institutional solutions, there is no argument from ASP to the wholesale exclusion from the franchise of those whose liberal rights have been partially (domain-specifically) restricted due to their incompetence.[16]

1.2.3. Why (P3) is False: The Permissive Interpretation of ASP

Contrary to the Restrictive Interpretation, I want to argue that individuals are properly speaking subject to law, for the purposes of the ASP, if their rights and obligations are determined by the law. It is immaterial, then, whether they can exercise these rights: they are still subject to law, in the relevant sense, according to this reading of the ASP. I argue that this Permissive Interpretation of the ASP is superior to the Restrictive Interpretation for two reasons, and therefore, (P3) in the argument above is false, and hence the Indirect Liberal Unity Argument is unsound.

First—unlike the Restrictive Interpretation one—the Permissive Interpretation does not ignore the distinction between *holding* a right, on the one hand, and *exercising* it, on the other. Competence-based right-restrictions are characteristically not restrictions on what liberal rights individuals hold, but on what liberal rights they are competent to exercise. The subject of a given right and its agent may come apart. For instance, an individual may be deemed incompetent to exercise her property rights: she may not alienate, say, her real estate without a guardian's consent. In this case, the subject of the right and the guardian exercise the right together; or perhaps in some cases, the guardian exercises the right on the individual's behalf who is under her guardianship. But the latter one still continues to hold that right, and to hold

[16] It is possible that the ASP might require, *ceteris paribus*, domain-specific participatory rights which would allow each citizen to participate in those decisions that are binding on her. Investigating this proposal in detail, however, would go beyond the scope of the present thesis.

it exclusively: it is still *her* property, and not the guardian's. Property taxes are her liability, rent income contributes to her wealth, and if she dies, it is her relatives that inherit, and not the guardian's. The same is true of children's property ownership, or contractual rights and obligations: they are exercised by (or depending on the child's age, together) with the primary caretaker(s), but it is still the child who holds the relevant liberal rights, without full capacity to exercise them. The law specifies her *rights and duties* directly by virtue of her status as right-holders. In Hohfeldian terms (Hohfeld 1919), competence-based restrictions restrict right-holders' powers and immunities—e.g., they lose the power to enter into a contract on their own, or they might not be immune to another person, viz. the guardian or caretaker, impeding them in an attempt to change their own rights and obligations. But privileges and claims are not necessarily restricted—e.g., they may be free to use their property without interference on terms specified by the law, and they are free to claim the social services or benefits anyone else in a comparable situation is entitled to.

Second, the Permissive Interpretation is also intuitively superior to the Restrictive Interpretation because it recognizes, with the help of the distinction between holding and exercising a right, that the way incompetent human individuals and non-human animals are subject to the law is fundamentally different. Incompetent human individuals are right holders in liberal democracies, and those who are authorized to exercise these rights on their behalf can use all the mechanisms available for the protection and advancement of individual rights, for the sake of the right holder's rights. While I have no space to argue for this, I assume this to be justified practice. Legal institutions are structured so as to specify and protect individual moral rights in special ways, respecting the right holder status of those, too, who cannot exercise their rights.

In sharp contrast, non-human animals are not subject to the law at all in the above senses. True, the law affects their interests, and it should also protect these interests too in morally

justifiable ways. (For example, by instituting prohibitions and criminal sanctions on animal torture, by heavily regulating farming activities etc.). It is entirely possible that the morally required set of these protections is much, much more demanding than what we currently see in liberal democracies. But even this much more progressive set of protection, I submit, would not resemble the legal institutions that specifically serve the specification and protection of humans' moral rights. Again, I think this is no mere accident: I assume that it reflects a fundamental difference between non-human animals and human individuals which persists even if the latter are found incompetent of exercising their rights. Incompetent human beings are right-holders, non-human animals are not—this is a very salient appearance, and the burden of proof is on proponents of the Restrictive Interpretation to prove that this appearance is illusory [17] The Permissive Interpretation of ASP, then, recognizes this difference between incompetent human individuals and non-human animals, and acknowledges the special right holder status of incompetent human individuals. It also understands this status (and only this) as the one relevant to who is subject to the law in the sense triggering ASP.

The fact that those who are incompetent to exercise liberal rights still hold them matters hugely, then, because this makes them subject to law in the relevant sense. The Restrictive Interpretation of ASP entails a *pro tanto* requirement to exclude from the electorate those incompetent to exercise their rights. By contrast, the Permissive Interpretation of ASP holds it as irrelevant whether someone can exercise their rights, as long as their rights and obligations, properly speaking, are specified by the law. The Permissive Interpretation of ASP therefore triggers a requirement to enfranchise all those whose rights and obligations are thus specified

[17] I acknowledge, of course, that this position ultimately requires justification to avoid the charge of speciesism. There must be a fundamental difference between (incompetent) humans and non-humans beyond the merely biological fact that the former are human. The normative relevance of this further difference is what justifies the differential treatment of the two groups. I believe, nonetheless, that my argumentative strategy is fair. There is an overwhelmingly strong intuition that such a difference exists, and this intuition is recognized and elaborated in detail in liberal democratic legal systems. So, while there is no default every position that does not require justification at all, it is the more counterintuitive position that requires more—and provides less, in this case.

by a given political authority—irrespective of restrictions on someone's *exercise* of their liberal rights.

To conclude, the superior interpretation of ASP, i.e., the Permissive Interpretation, supplies at least a *pro tanto* requirement to enfranchise children and adults living with severe mental disabilities, as they are no less holders of rights and subjects of obligations determined by the law than their statistically normal adult fellow citizens.[18] Premise (P3) in the argument above is thus false, and the *pro tanto* Indirect Liberal Unity Argument for disenfranchisement is unsound.

The Guardianship and Restricted Exercise Objection. You may object that if the incompetent citizens should have a right to vote, on the Permissive Interpretation of the ASP, at least it does not follow that they should also be allowed to exercise it. All that follows is that if necessary, others should exercise it on their behalf. Coherently with the spirit of this objection, some argue that children should have a right to vote too, but primary caretakers should exercise this right on their behalf (Minow 1986, Rutherford 1998). Similarly, Martha Nussbaum (2009) argues that guardians may exercise this right on behalf of those whose cognitive disabilities do not allow them to exercise it:[19]

> Here the person's cognitive disability is so profound that she cannot communicate her wishes about whom to vote for to a guardian; indeed, in many such cases he or she cannot form such view. […] What does equal respect require in such cases? I would argue that it requires that the person's guardian be empowered to exercise the function on that person's behalf and in her interest, just as guardians currently represent people with cognitive disabilities in areas such as property right and contract. (Nussbaum 2009, p. 347)

[18] This is the point Francis Schrag (2004) must have in mind as he asks, "why should adolescents accept laws that profoundly restrict their freedom if they were not party to the process?" (p. 369).

[19] Nussbaum's proposal (2009) rests on different normative grounds, though. She is not concerned with the ASP, but rather with the symbolic, expressive significance of a universal and equal right to vote as a unique way to express the equality of citizens. I discuss the symbolic, expressive considerations in favor of enfranchisement in detail in Chapter 3.

There is at least one fundamental problem with this suggestion, though: it is unclear what it even means for you to have a right to vote that only someone else can exercise on your behalf. As Andrew Rehfeld (2011) observes:

> […] in no way is a proxy vote a right for the person being represented. It is rather a granting of a right (an additional power) to some people to look out for those things that they, or we as a society, wish to protect. The conceptual error of treating "proxy voting" as an actual political right of those for whom the proxy is cast is regularly made in the literature on children's voting. (Rehfeld 2011, p. 156)

But why is this a conceptual error? Rehfeld does not go into details, but his description is helpful. Compare, e.g., a right in property with the franchise. If you cannot exercise the former, there are still privileges and claims that you may retain. What about the franchise? Unfortunately, the core constituent of the right to vote is exactly a *power right*: an entitlement to contribute to changing one's own and others' normative status by participating in political decision-making (see also Waldron 2000). Of course, there may be other elements left: e.g., if you hold a right to vote but you do not exercise it, you may still have a claim to, e.g., a fair electoral procedure. Others (notably, the state) then have a duty to provide it, and they specifically owe it to you (too) to provide it. But the right to vote is normatively empty without the power to exercise it: all other constituents of the rights merely serve the purpose of its meaningful exercise, and hence their value is conditional on the power right entitlement to exercise the franchise. Consequently, providing individuals whose exercise of liberal rights is restricted due to incompetence with a similarly restricted right to vote seems pointless. It is unable to serve the purpose of allowing citizens to participate in the political decisions which specify the rights they hold and the obligations they have.[20]

[20] There are obviously also further problems with entrusting the guardian / caretaker with casting the vote which stem from a potential conflict of interests between the former and the person under guardianship / the child, or from the cognitive biases of the guardian / caretaker grounded by his or her own interests. See Schrag 2004, p. 374. (Nussbaum 2009 [pp. 347–348] also considers these problems, and sets them aside as not specific to the

1.3. The Arguments from Presupposition

There is an alternative case to be made for an indirect relationship between restrictions on liberal rights based on incompetence, on the one hand, and restrictions on voting rights, on the other. The competent exercise of democratic rights may presuppose the competent exercise of liberal rights without assuming that the two competences are identical. Consider some analogies.

Epistemic indication. Mill (1991) argues, for instance, in Ch. VIII of this *Considerations*, that people who cannot produce an income for themselves should not be enfranchised either. While this idea can be interpreted as a claim of moral unworthiness, a fairer interpretation may go as follows. The successful exercise of liberal rights in the service of your interests is a good indication that you would successfully or responsibly serve your community too in your decisions. So, the link between the competence relevant to liberal rights, and the one relevant to the franchise, is epistemic: the presence of one is supposed to be a reliable indicator that the other one is present too.

By now, we know that it is a mistake to suppose such an epistemic link. This is because—as I observed earlier—the exercise of liberal rights and that of the franchise, according to their normative functions, require decision-making over very different domains, relying on different kinds of reasons. Accordingly, practice or excellence in one domain may fail to indicate or predict excellence in the other domain. Some epistemic procedural virtues may be domain-independent: one may be just a very conscientious decision-maker, always considering all the available evidence whatever needs to be decided on in one epistemic domain, but not in another. One of the most well-established results of political economy is that the costs and benefits accrued to making epistemically virtuous—well-informed,

right to vote, but merely generally relevant to the institution of guardianship or caretaking, and not irremediable.) However, these objections seem tangential compared to the problems I am discussing above.

unbiased etc.—decisions may vary to the extreme between political and non-political decision-making situations (see, e.g., Caplan 2008, Somin 2013). Therefore, the epistemic indication hypothesis is false.

Normative presupposition. Alternatively, you may assume that the relationship between liberal rights and the franchise is analogous to the relationship between, for example, some political liberties. E.g., the justification of the right to vote presupposes the right to free speech and freedom to information. If you don't have the right to access relevant information, and others do not have the liberty to convey it to you, you are unlikely to competently exercise the right to vote, because you may not have access to information that would be crucial to your decisions, and others may not be able to provide you with it. So, as Clayton and Chan (2006) argue, "there is a case for consistency between the voting age and the age at which censorship laws are relaxed, such that when an individual has the vote, they might be as informed as any other voter" (p. 541). By analogy, one might argue as follows. When you cast a vote, you are influencing political decisions which specify a regime of citizens' liberal rights. But if you cannot exercise your liberal rights, you cannot be sufficiently informed to make good decisions in this regard. You do not have first-hand experience of exercising liberal rights under this or that specification of the rights regime—e.g., under flat or progressive income taxation—, and hence you do not know how alternative regimes affect citizens' interests. But the justice of different regimes depends on how they actually affects citizens' interests (see, e.g., Waldron 2009). Therefore you cannot be competent enough to participate in deciding between alternative liberal rights regimes based on how just they are.

Yet this argument relies on a mistaken understanding of the epistemic role of first-hand experience for political decision-making. First, the lack of experience with a particular rights regime may actually make you less biased, and more impartial: hence, a better decision-maker as far as epistemic virtues are concerned. Second, being affected by a liberal rights regime

gives you only very limited information that is hard to process in any case. Some rights or obligations may not directly or perceptibly affect your interests at all (e.g., because you do not own a car, or you never had to perform military duties although you have them), and you certainly cannot extrapolate from your experience to how your interests would be affected by alternative rights regimes, nor to how others' interests would be affected either by the regime(s) you experienced or by alternative rights regimes. Third, while it is true that individuals who foresee the possibility of being directly affected by a liberal rights regime have more incentive to collect relevant information on it, this information will not necessarily be balanced. It may provide a more accurate idea of how a rights regime would affect their own interests, and a less one of how it would affect others' interests. This may be due to heightened motivation to seek out and process information about the former, but not the latter. Or it may just be due to cognitive biases which do not allow you to process information regarding how others' interests are affected as well as information about how your own interests may be affected. Yet in order to make a decision on the justice of a policy alternative, or a rights regime, you would need to consider how it would affect others' interests just as much as how it would affect yours. All these go to show that the experience of exercising or even holding liberal rights hardly serves as a unique, or even an especially valuable source of competence for the exercise of the franchise.

1.4. Non-Discrimination

Finally, I would like to consider a liberal argument which also questions the normative distinctiveness of competence-based restrictions on the franchise. This argument relies on the consensual liberal understanding that individuals should have *equal* freedoms at the very least in the sense of formal equality of the rights they may exercise. The concern for non-discrimination most often arises with regard to adults living with mental disabilities rather

than with regard to children (see, e.g., Schriner et al. 1997, Redley 2008, MDAC 2011).[21] It does not typically target competence-based restrictions directly. Instead, it targets a technical precondition of non-presumptive restrictions: namely, competence-testing. In its radical version, it roughly goes as follows:

> (P1) Most adult citizens are not required to undergo competence-testing so as to exercise their right to vote.
>
> (P2) Those whom a court declares to be potentially lacking legal capacity are required to undergo competence-testing in order to exercise their right to vote.
>
> (P3) Citizens' right to equal freedom entails that the rights of some citizens may not be restricted while the rights of some others are not restricted.
>
> (C1) Competence-based testing violates citizens' equal freedom.
>
> (P4) Citizens' equal freedom may not be violated.
>
> (P5) There is no way to introduce competence-based restrictions without testing for competence.
>
> (C2) Either everyone should be tested for competence, or no-one.

I take the argument to be valid. However, it faces some serious objections. First, the argument is seriously incomplete as it utterly ignores the distinction between internal and external justifications of competence-based restrictions. It assumes that all citizens should have the right to vote, and actually have the relevant *pro tanto* right. Thus, the differential treatment is taken to affect a group of individuals who are homogeneous in the sense that they are all *pro tanto* right-holders. The argument from non-discrimination simply assumes that any justifications of competence-based restrictions on the franchise are external. But this cannot

[21] See also the *Joint Statement of NGOs on the Venice Commission's 'Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People With Disabilities in Elections'* (Disabled People's International et al. 2011): "The right to vote and stand for election is not an absolute right: it is subject to age and citizenship requirements. It should never be subject to a 'proper judgment' test (as per the current Venice Commission proposal), even if the restriction is imposed by an individual decision of a court of law. A 'proper judgment" test constitutes indirect disability-based discrimination as it will only apply to people identified as having intellectual or psycho-social disabilities."

be assumed without further argument.[22] If there is an internal justification for competence-based restrictions, then the question of discrimination does not even arise, strictly speaking. For an internal justification of the restrictions would establish that granting the right to vote to some people is not even *pro tanto* justified. So, they are not even members of the group whose voting rights should, *ceteris paribus* be equal. In that case, it is a methodological mistake to compare the rights of the individuals designated in (P1) with the rights of the individuals designated in (P2).

Consider children's right to vote: they have none, and this is far less often considered discriminatory than the disenfranchisement of adults with severe mental disabilities. The reason for this may as well be that children are not part of a homogenous class of citizens who should have the *pro tanto* right to vote.[23] Instead, it is logically possible that their incompetence does not undermine their claim to a vote that they would otherwise be entitled to, but they are not entitled to vote at all, not even *pro tanto*.[24]

Consequently, the argument against competence-based restrictions from non-discrimination gets off the ground only once internal justifications of competence-based restrictions have

[22] Barclay (2013) holds that "[i]f there is one thing that debates about the franchise have taught us over the last 100 years it is that the onus of proof should be on those who wish to restrict it" (p. 156). While this is a reasonable distribution of the burden of proof in law for various reasons, it seems far from self-evidently true that the dialectic should be so asymmetrical in a philosophical discussion of competence-based restrictions.

[23] In fact, I have shown that the an argument from the All Subjected Principle, properly understood, does support such a *pro tanto* right to vote. Radical arguments from discrimination, however, are radically incomplete in that they do not make this step explicit at all—and even if they did, they would still face the objection that they must tell why discrimination is *unjustified*.

[24] Steven Lecce (2009, p. 133) argues, though, that children's right to vote should not be restricted as it is a form of unjustified discrimination. He relies on the assumption that in full-fledged democracies, adults cannot be subject to any competence-based restrictions (e.g., in Canada, there are no such restrictions at all). And if that is the case, there is no good reason to treat children in a different manner, he submits, without further argument. Similarly, he observes that "[t]he egalitarian argument invokes the interests of *every* person but proceeds, on the basis of that premise, to limit the franchise to every *adult* citizen. […] But sound arguments are required denying children the vote." (ibid., p. 134). This formulation, again, assumes that internal justifications of a competence-based restriction are out of question.

In my view, Lecce's findings are partly right: children, on the Permissive Interpretation of the All Subjected Principle, do have a *pro tanto* right to vote. It will take further arguments to show that all things considered, they should not be given that right, and that this judgment has to do with a lack of competence. But Lecce reaches his conclusions without the argumentative backup of the All Subjected Principle and its interpretation that I have supplied.

been refuted. If they cannot be conclusively refuted, then at least a good case should be made against such justifications before the argument from non-discrimination should earn our attention. This, again, confirms the methodological significance of the internal justifications of these restrictions, which will be discussed at length in the next chapter.

Second, fatally, the radical argument from non-discrimination relies on a misunderstanding of equal treatment or non-discrimination. Obviously, the requirement of non-discrimination does not prohibit *all* forms of differential treatment. It merely triggers a requirement of justification: there has to be a good enough reason for differential treatment.[25] (P3) is false, in this form. This interpretation of the prohibition on discrimination simply begs the central question as to whether or not differential treatment based on variations in competence is justified. So even once the argument gets off the ground, it has to face the challenge of showing that the discrimination in question is unjustified.

It should be noted, for fairness, that a moderate version of the argument from non-discrimination also exists. This version does not necessarily oppose all kinds of competence-testing for those who cannot be presumed competent. Instead, the argument concludes that *only minimalistic testing* should be used in these cases to avoid discriminatory exclusion from the franchise. For example, citizens presumed to be competent are not required to have any knowledge about the candidates or their programs in order to exercise their right to vote. Hence it is unclear why those who cannot be presumed competent without testing should exhibit *this kind and level* of competence. Whatever testing is used, it should not test for a higher level or a different (or additional) kind of competence than what is required of others and can be simply presumed in those other cases (see, e.g., Redley 2008; Raad et al. 2009 may also be interpreted as providing a testing device that meets this criterion).

[25] See also Barclay (2013): "This is a totally implausible notion of discrimination: morally relevant differences between people can certainly be the basis of differential treatment" (p. 152).

The moderate version of the argument is vastly superior to the more radical version discussed above. First, it does not assume that non-discrimination prohibits all forms of differential treatment. Second, it also acknowledges that there are cases in which it is reasonable to overcome the mere presumption of competence, and require testing, even though in other cases the presumption of competence survives without any necessary resort to testing. In other words, competence-based restrictions on the franchise, even if discriminatory, can be justified—at least in some forms. Third, the argument is not affected by whether or not competence-based restrictions are internally or externally justified. If the justification is internal, then the argument assumes that whatever competence is sufficient for some to be entitled to the right to vote should also be sufficient for others to have the same right. If the justification is external, then the argument assumes that if all citizens have a *pro tanto* right to vote, then any reason for restricting that right on the basis of competence should apply uniformly to all citizens unless differential treatment is justified.

However, while the moderate version of the argument seems tenable, it does not take any stand on whether and why competence-based restrictions on the franchise are, in principle, justified, if they are justified at all. Thus it cannot—and it is not even intended to—solve the fundamental problems this thesis is concerned with.

1.5. Skepticism about the Moral Relevance of Competence-Based Restrictions on the Franchise

Up to this point, I have been defending the methodological legitimacy of competence-based voting rights restrictions as a distinct theoretical issue. As I am steering my way from Scylla—the methodological conviction that all rights-restrictions should be dealt with in a unified manner—I may seem to draw dangerously close to Charybdis—the view that specific

restrictions on the franchise are not morally significant problems at all. In this section, I will fend off this latter methodological objection. It can be reconstructed as follows:

> (P1) Individual votes have a marginal effect on the results of elections.
>
> (P2) A restriction on someone's rights is morally significant only if the exercise of those rights have more than merely marginal consequences.
>
> (C) Therefore, restrictions on the franchise are not morally significant at all.

Crucially, the argument may cut both ways, depending on what further premises are deployed. Those against competence-based restrictions may argue as follows. The onus of proof is on those who want to restrict any rights. But any particular individual's exercise of the right to vote cannot really have any consequences. So, first, restricting any particular individual's right to vote cannot serve any morally significant purpose either (see P2). Hence restricting any particular individual's right to vote cannot be anything else but unjustified. Second, it may be pointed out that the number of those whose rights are restricted due to incompetence is rather small. So, it may be argued, even their collective exercise of the right to vote is very unlikely to make any difference—e.g., a distortive effect—to election results. Then again, there is no good case for the restriction (see, e.g., Fiala-Butora et al. 2014, p. 92, Lopez-Guerra 2010, p. 138).

Starting from the same argument above, though, some support for restrictions can also be drawn—or at least support to block some arguments against competence-based restrictions. First, if the moral significance of voting rights-restrictions is only determined by how consequential the individual exercise of the franchise can be, then it is just as unclear what is so objectionable about restrictions as it is what is so morally compelling about them.[26]

[26] See, e.g., Brennan (2011a) "Neither my vote nor David Duke's vote can be expected to change the outcome of the election, nor do our votes have significant expected utility or disutility. However, in virtue of having the right to vote, each of us still holds a kind of status. We are authorized, in conjunction with others, to make fundamental political decisions. Anyone who claim otherwise, that holding the right to vote is not an exercise of

Second, the same problem may arise with regard to the collective exercise of suffrage, too. The argument relying on the collective inconsequentiality of the franchise, according to Lopez-Guerra (2014), "also rules out the opposite instrumentalist case, namely, that minors and the mentally impaired should be given the vote because politicians would then take their interests more seriously and outcomes would improve" (p. 63).

The argument concerning the inconsequentiality of the *collective* exercise of the franchise is not convincing, though, or at least it appears highly contingent. First, it depends on the size of the group concerned: those with mental disabilities may indeed be an inconsequential group of voters even if they voted in a block. I would be less certain, though, of the inconsequentiality of enfranchising all children between 12 and 18, even in aging Euro-American societies. Second, the consequentiality of the way members of a group vote depends not only on the intrinsic, but also on the extrinsic features of the group: e.g., the coalition the group manages to build, for instance by log-rolling, which in turn heavily depends on the balance of other political powers. Third, it is often argued that the incompetent may simply cast random votes, so they do not change the result even if they are numerous. But this seems plainly wrong: the sheer increase of the number of votes cast, if randomly distributed, may affect electoral outcomes, depending on the electoral system used. This is because *competently* cast votes are typically *not* randomly distributed. As Fowler (2014) points out, "random votes would tend to help parties doing worse" (pp. 109–110)—since those who competently vote have a lower than random chance of voting for them. That's what makes them do worse, after all.

One reason why (P2) sounds plausible is that it is ambiguous: it can be understood as referring either to the individual or the collective exercise of the vote. As I hoped to have

political power, seems to be committed to the view that restricting suffrage would not disempower anyone" (p. 709).

shown, taking its collectivistic interpretation, the conclusion does not follow. A group of incompetent voter may have a significant effect on electoral outcomes, if the right conditions are met. Therefore, even assuming that (P2) is true, competence-based restrictions on the right to vote are, collectively, a morally significant matter.

The way incompetent voters influence election results can have a crucial impact. Incompetent political participation may have an impact on others, as it may harm them according to some baseline of harm. Or it may have an impact on the legitimacy of political authority, as it may distort decision-making procedures relative to some adequate normative standard. So, on the one hand, the consequential significance of incompetent voting, collectively speaking, cannot be ignored when determining whether or competence-based restrictions on the franchise are justified. On the other hand, any argument attempting to justify individual restrictions on the right to vote cannot *directly* rely on the collective consequential significance of incompetently cast votes. There is a serious gap to bridge between *collective* moral harm or disvalue and *individual* rights restrictions to prevent it. Whether this gap can and should be bridged will be discussed in later chapters.

Finally, however, (P2) is not only ambiguous but also false. Rights-restrictions can be morally significant even if the exercise of the right, whether considered collectively or individually, is inconsequential. Being a right-holder constitutes a political status. Some of the controversy around the justification of competence-based restriction on the franchise concern exactly the status suffrage affords to citizens: namely, the status of an equal participant in the community which exercises political authority over it members. Later chapters will resolve whether holding this status without competence is morally objectionable. For now, it is enough to conclude that the consequential insignificance of the right to vote provides no sufficient reason to undermine the moral severity of the debate concerning whether the right to vote could or should be restricted due to incompetence.

1.6. Conclusion

In this chapter, I have argued for the following. First, competence-based restrictions on the right to vote cannot be merely a special case of such restrictions on liberal rights. This is because the right to vote, unlike liberal rights, is not justified by the right to self-determination, and the permissible means of exercising political and self-determination rights is different.

Second, since liberal and democratic rights have different justifications, these may identify, in a fine-grained manner, different capacities relevant to the competent exercise of the respective rights. Therefore, the fact that both the competent exercise of the franchise and the competent exercise of liberal rights require some of the same specific capacities, individuated in a course-grained manner, does not show that there is no distinct problem of competence that applies only to the right to vote.

Third, however, I argued that the All Subjected Principle, a requirement of popular sovereignty, supplies a *pro tanto* requirement of enfranchising humans who are incompetent to exercise their liberal rights, including children and adults living with severe mental disabilities. I have presented two interpretations of the principle. While the more restrictive one justifies a *pro tanto* requirement to exclude those incompetent to exercise liberal rights from the electorate, this interpretation fails to account for the complex ways in which incompetent human beings are subject to the law in the relevant sense. The more permissive interpretation of the All Subjected Principle, in contrast, can readily accommodate the ways in which those who hold but cannot exercise liberal rights are subject to the law. It is this interpretation which supports—in fact, *pro tanto* requires —the enfranchisement of those incompetent to exercise their liberal rights.

Fourth, I have argued that arguments from non-discrimination to enfranchising incompetent humans fail on both substantive and methodological grounds. Competence-based restrictions on the right to vote may not be illegitimate just because they discriminate between voters with different competence-levels; and appealing to the very notion of discrimination may be out of place altogether if the justification on the restrictions in external, and not internal.

Fifth and finally, I have shown that the marginal consequential significance of the individually cast vote does not reduce the moral significance of competence-based restrictions on the franchise. On the one hand, the collective nature of voting also endows individual restrictions on the franchise, in the aggregate, with consequential significance. On the other hand, taken both individually and collectively, restrictions may be significant irrespective of the extent to which individual votes determine electoral outcomes.

Based on these results, the methodological adequacy and moral significance of distinctive arguments which argue for or against competence-based restrictions specifically on the right to vote should not be in doubt any more. The following chapters focus, accordingly, on such arguments.

2. Internally Justified Restrictions and Minimal Competence

2.0. Introduction

In the previous chapter, I discussed justifications of competence-based restrictions on the franchise that questioned the specificity of the right to vote in the sense that they attempted to justify liberal rights and the right to vote in the exact same manner, or derive restrictions on the latter from restrictions on the former. This chapter moves beyond this methodology. In the rest of this dissertation, I focus only on arguments for and against restricting the franchise that apply specifically to the right to vote.

Throughout this dissertation, I use a distinction I make between internally and externally justified restrictions. As you will recall from the Introduction to this thesis, while internal justifications rely on the same moral reasons to justify both the franchise and (at least some of) its restrictions, external justification rely on one kind of moral reason to justify the franchise, and another kind (or other kinds) of moral reasons to justify its restrictions. In this chapter, I reconstruct the general argumentative strategy used by internal justifications of competence-based restrictions on the right to vote, and provide a critical assessment of one particular argument—which I will refer to as the Pointlessness Argument—that instantiates this strategy.

The contribution of this chapter to debates surrounding the justifiability of competence-based restrictions on the franchise is fourfold. First, to the best of my knowledge, I identify and describe for the first time in detail the general characteristics of internal justifications as error theories of electoral inclusion. On the one hand, I provide and a general description of the methodology of internal justifications of rights-restrictions in general. On the other hand, I apply the argumentative strategy described to competence-based restrictions on the right to vote.

Second, I defend internal justifications as viable *pro tanto* arguments for *permitting* the uniform exclusion of small children and people living with severe mental disabilities. I reconstruct and criticize Thomas Christiano's version of such an internal justification—the Pointlessness Argument. I propose two interpretations of the argument, and defend one as more plausible than its alternative.

Third, I defend internal justifications of competence-based restrictions on the right to vote against the charge that they have an undue epistocratic leaning. Fourth, I also show what internal justifications cannot achieve: namely, neither can they argue for a moral requirement to exclude the incompetent from the franchise, nor can they establish the equality of the franchise of the competent, nor can they justify even the permissibility of the relatively high competence-thresholds on the franchise that current age limits specify in most liberal democracies worldwide.

2.1. The Methodology of Internal Justification

2.1.1. Internal Justifications as Error Theories

Internal justifications of competence-based restrictions on the right to vote are, in fact, error-theoretic accounts. How do they work? They call into question the relevance of the following rough argumentative strategy that may seem the paradigm in justifying rights restrictions. As the term "restriction" strongly suggests, in arguments attempting to either justify a rights restriction or show that it is unjustified, it is presumed that the individual affected by the restriction has a *pro tanto* moral right, and this right is subject to some kind of restriction. Now, when the subject of this *pro tanto* right is restricted in exercising it, this restriction requires moral justification. The very requirement of justification is itself directly triggered by the moral fact that the individual affected by the restriction is a bearer of a *pro tanto* right.

What I refer to as internal justifications of rights-restrictions have a different argumentative structure. Instead of justifying the restriction, they explain it away. They challenge the very presumption that the individuals affected by the restrictions are in fact bearers of a *pro tanto* right which is allegedly restricted. Individuals may *seem* to have the right in question—in George Letsas' (2013) terms, they are bearers of *prima facie* rights. But internal justifications of rights-restrictions aim to show that this is a mere appearance. It is not only the case that the individuals concerned do not have an *all things considered* right. They do not even have the relevant *pro tanto* right, either. Hence the error-theoretic nature of internal justifications: they justify rights-restrictions by showing that we mistakenly assume that someone has a *pro tanto* right in the first place.

Internal justifications are powerful because once it is shown that there are no *pro tanto* rights where there seemed to be, it immediately follows that there isn't (and there cannot be) any morally relevant restriction on these rights either. Liberties, of course, are truly restricted also when they fall within the ambit of *prima facie* rights, and not only when they are protected by *pro tanto* rights—it is only that no *rights* are restricted in such cases. Consequently, the moral requirement for any further justification of these restrictions is undercut. On the one hand, the subject of a merely *prima facie* right has no legitimate complaint that her liberty has been unduly restricted. If the internal justification of a restriction on her *prima facie* rights is successful, it shows that there is no particularly strong reason to protect the liberties under restriction at all (cf. Dworkin 1977, pp. 266ff, 269). On the other hand, the subject of a *prima facie* right has no legitimate complaint that she is not treated as an equal of those who can exercise the right in question without similar restrictions. Others may have the *pro tanto* right that she does not have, so they are allowed to exercise it while she is not. Yet this instance of differential treatment does not require any further justification, since in such cases, we have no reason to presume that differential treatment as between the holder of a (mere) *prima facie*

right and the holders of the same *pro tanto* right is morally arbitrary (as long as the differential treatment concerns the exercise of the right in question, of course). Others are treated as right-holders (which they are); she is treated as if she is not (since she really is not)—there is not even a presumption of arbitrary discrimination at work here.

Unfortunately, the language of "discrimination" sometimes fails to grasp the special methodology of internal justifications. Legal as well as philosophical arguments against competence-based restrictions on the franchise typically ignore the possibility that these restrictions have an internal justification—and that the two groups compared are not relevantly homogenous at all, as a consequence, so comparison is futile. While there may be no good reasons to restrict someone's right to vote based on competence-related considerations *once we assume* that everyone regardless of competence should be granted a *pro tanto* right to vote, internal justifications are intended to question precisely this assumption. As this assumption is necessary for arguments from non-discrimination to get off the ground, these arguments cannot answer arguments which are based on an internal justification methodology.

As it is true about error theories in general (for the paradigm, see Mackie 1977), however, it is true about internal justifications of rights restrictions that they have a double task. Showing the allegedly restricted right to be merely *prima facie* is only one of these tasks. The other one is to give a convincing account of why some people *appear* to have a *pro tanto* right that they do not in fact have. If the intuition that they do have the right in question persists, and cannot be explained away, internal justifications remain implausible. Yet these two tasks need not correspond to two different sets of arguments, or two distinct argumentative steps, or two distinct strategies that are pursued in parallel. Instead, they simply correspond to two different standards of evaluation that may be applied to the selfsame argument(s) or argumentative step(s): the latter should be able to both (1) show the lack of a *pro tanto* right, and (2) do so

by addressing at the same time some of the considerations that may have led us to believe that there are *pro tanto* rights where there are none.

2.1.2. What are Internal Justifications Internal *to*?

The argumentative strategy I briefly described above is "internal" in the following sense. The restrictions are justified, following this strategy, *not* by reference to moral considerations that are independent from, or extraneous to, the moral justification of the right they restrict. Instead, the very same moral reasons which justify the right in question justify, at the same time, some 'restrictions' on it; or to use more neutral language, the reasons which justify the right in question also justify its limits. The justification of the restrictions is *internal* to the justification of the right itself.

The availability of logical space for the internal justification of *specific* restrictions depends on the theory of rights used to justify rights in general or the specific right. However, every plausible theory of rights allows for the internal justification of *some* restrictions on some rights. This is simply because every theory of rights must give some moral reasons that count in favor of granting individuals rights in general, or some specific rights in particular—and these justificatory reasons apply only to some individuals but not others. For instance, assume, for the sake of a very simple argument, that all individual rights are granted to individuals by virtue of their rationality, properly spelled out. Surely, some individuals are not rational—for example, snails. So, according to our rather simple theory, the justification of individual rights at once justifies why snails do *not* have rights.[27] True, this is far from an astounding result in moral reasoning, because snails don't quite appear to have rights at all. That is, they do not have any *prima facie* rights either. Still, the internal justification of the

[27] If you are not convinced that snails are really devoid of *any* rights, even a right to life, because you find rationality as the ground of individual rights implausible, you may still grant that whatever is the right theory of rights, it also justifies why dandelions or non-sentient robots do not have individual rights. The point is that it is not conceptually incoherent to talk about entities that are individuals, but nonetheless fail to share the qualities of some other individuals by virtue of which these others are subjects of rights.

restriction is slightly informative even in this case, as it tells us *why* snails do not have rights, although they very obviously do not have any. Of course, internal justifications of rights-restrictions may become more interesting when they are applied to members of a 'grey zone': a set of individuals who at least do not intuitively clearly appear to be no right-holders at all. And internal justifications become even more interesting when they show that individuals who quite clearly appear to have (some) rights in fact do not have them. Moral accounts may always be more interesting when they are revisionist, though this does not undercut the significance of less revisionist accounts either.

Internal justifications of rights-restrictions may be formulated at different levels of generality. First, they may be internal to a general justification of the scheme of rights. My example above is an instance of this kind: it attempted to show that snails do not hold *any* rights. John Rawls, to give a more popular example, argues that two moral powers, conceived of as threshold-capacities, ground persons' moral status, and individuals are bearers of equal rights by virtue of possessing these capacities (Rawls 1993, pp. 19, 203). It follows from this, however, that those who lack either or both of these moral powers are not accorded the same moral status, and therefore are not bearers of rights in general. Here we have another instance of a very general internal justification of rights-restrictions.

The implications of a general justification for rights-restrictions may not be so general. On the contrary, general internal justifications may deliver fairly specific results about particular restrictions on particular rights. For instance, Ronald Dworkin's theory of rights is based on the assumption that individuals who are subjects of rights do not have a general right to liberty, but rather a general right to equal concern and respect. It follows from this, or so Dworkin argues, that your right to free movement does not entail a *pro tanto* right to drive north on Lexington Avenue (which is regulated to carry southbound traffic) in Manhattan—there is at most a *prima facie* right to northbound movement on Lexington Avenue (Dworkin

1977, p. 269). This is a very specific result about a particular internal restriction on a particular right. Yet it is derived from general reasoning about the justification of rights: essentially, it is based on the denial of the existence of a general right to liberty which would entail a general right to free movement.

Second, though, internal justifications of rights-restrictions may be internal to the justification of a specific rights or sets of rights. The specificity of internal justifications is scalar: some justify restrictions given the justification of a particular type of rights rather than rights in general (e.g., democratic rights, liberal rights), and some may justify a more or less specific right (e.g., the right to vote, freedom of speech, or freedom of political speech specifically). In what follows in this chapter, I will examine internal justifications of competence-based restrictions on the right to vote which are specific in the sense that they follow from justifications of the right to vote, more narrowly, or political rights, more broadly, in particular.

2.2. Threshold-Restrictions and Internal Justification

Current legal practice accommodates threshold-like, but not scalar competence-based restrictions on the right to vote. It is widely accepted, even against some controversy, that minors up to some age limit are not enfranchised due to a lack of competence (see Rehfeld 2011; Schrag 1975, 2004), and it is less widely (cf. Nussbaum 2009), but still quite commonly accepted that some forms and severity of mental disability similarly undermine competence and thereby justify disenfranchisement (Raad et al. 2009; Redley 2008). What is similar in these restrictions is that they adhere to the following principles:

(1) *Non-Scalar Disenfranchisement* The franchise is fully restricted (i.e., exclusion obtains) below a threshold of competence.

(2) *Non-Scalar Enfranchisement*: The franchise is not restricted at all above a threshold of competence.

In fact, both of these principles are somewhat surprising, even though firmly entrenched in our legal practices. The reason for their implausibility is that voting competence is intuitively understood as scalar, measurable along a continuum—so, you might expect that competence-based restrictions on the right to vote would track this continuum with scalar restrictions. One challenge that accounts of competence-based restrictions face is to explain this apparent tension between the distribution of competence and the distribution of competence-based restrictions. This is the gist of the Asymmetry Puzzle briefly described in the Introduction to the present thesis.

In this chapter, I will show that internal justifications of competence-based restrictions can successfully face only one half of this challenge: they do well at justifying the principle of Non-Scalar Disenfranchisement, but they have nothing to say about Non-Scalar Enfranchisement. In other words, they explain why the franchise of individuals whose voting competence falls below a certain threshold can be restricted. Further, they also explain why this restriction could consist in full-blown exclusion from the electorate regardless of differences in competence below the threshold level, rather than, for example, the assignment of votes with lower weight, as proportionate to competence (for such a proposal regarding children's franchise, see Rehfeld 2011, p. 158). On the other hand, internal justifications of competence-based restrictions cannot explain why individuals whose competence levels still vary above the threshold should have equally weighted votes. Nor can they explain why those below the threshold should, rather than could, be excluded from the franchise.

2.3. The Pointlessness Argument

2.3.1. General characteristics of the argument

One of the most popular internal justifications of competence-based restrictions in the philosophical literature on voting rights is what I will refer to as the Pointlessness Argument. The argument comes in different versions, but the main idea behind all of them is the same. This argument does not try to establish that those with a competence below the threshold can only exercise voting rights worse than those beyond the threshold. Instead, it aims to establish that they cannot exercise them in a meaningful way, where what is 'meaningful' depends on the normative role of voting rights (cf. Fowler 2014, p. 96). The argument follows this scheme:

> (P1) It is impossible to exercise political rights in accordance with their normative justification without a specific, sufficient level of competence.
>
> (P2) If it is impossible to exercise political rights in accordance with their normative justification without a specific level of competence, then there should be a cut-off point, below which none may be distributed.
>
> (C) There should be a cut-off point below which no voting rights are distributed.

The argument does *not*—and need not—assume that voters whose competence level falls below the threshold specified by the particular version of the argument literally cannot exercise their legal right to vote. For example, it is not assumed that they could not go to the polls and fill out a voting slip, or operate, technically speaking, the voting machine. The inability to exercise the right to vote is neither necessary nor sufficient to show that someone falls below the relevant threshold. One the one hand, most children above a certain age, for example, would be able to exercise the right to vote in the sense that they are able to perform the tasks that constitute voting as a technical procedure. They can mark a valid ballot, they can follow the instructions of a voting machine or put their voting slips into an envelope, and

they can put an envelope into a ballot box. Perhaps well-trained chimpanzees would also be able to do all these. But this is insufficient to show that dexterous children or chimpanzees are sufficiently competent in the relevant sense. On the other hand, someone with a visual impairment or restricted mobility may not be able to exercise their right to vote on their own, without some assistance (depending on the exact procedure, of course). Yet this fails to show that they are *not* sufficiently competent to exercise the right to vote *in accordance with its normative justification*.

Instead, the argument is based on the view that the normative justification of the right to vote assumes that individuals should have that right *by virtue of* possessing a certain level of competence. It is hard to think, for example, of any justification of the franchise which assumes that individuals should have a right to vote by virtue of having a perfect, or even good enough, vision. Differences in the ability to exercise the right to vote which are morally irrelevant given the justification of the franchise are no reasons, according to the Pointlessness Argument, to deprive anyone of their right to vote, nor do they undercut any reason to enfranchise someone. On the contrary, it might also follow from the normative justification of the right to vote, or from further normative principles, that individuals who suffer disadvantages in the exercise of the franchise due to some inability or disability which is irrelevant as far as the justification of the franchise is concerned, should receive proper assistance in order to have an equal opportunity to exercise their right to vote.

Some sources of incompetence, however, are different: they undercut the very reasons for enfranchising the relevantly incompetent individual (cf. Christiano 2014, p. 69). So, they do not call for offsetting the lack of the relevant competence, or for providing the individual in other ways with an equal opportunity to exercise her franchise. The most popular voting competence test used in the USA, the Competency Assessment Tool for Voting (CAT-V), helpfully illustrates the difference between relevant and irrelevant kinds of competence

according to the Pointlessness Argument. The CAT-V test applies the standards laid down by federal courts in *Doe v. Rowe*:[28] persons may be excluded from the electorate only if they "lack the capacity to understand the nature and effect of voting such that they cannot make an individual choice" (p. 52). The underlying idea is that the justification of the franchise justifies enfranchisement in order to allow voters to make an informed and independent decision on what electoral results they want, and how they want to contribute to that result. The justification does not provide any reasons for the enfranchisement of those who simply cannot make a decision on what results they want, or cannot make an informed and independent decision (a decision based on the individual assessment of reasons), and who do not understand how their vote would contribute to the preferred results—these are, in fact, largely what the CAT-V test tests for (see Raad et al. 2009). The test does not examine whether individuals make substantively good decisions according to any outcome-based standards, but only whether they have the competence which is necessary for individual enfranchisement to be a suitable means to achieve the normative purposes of enfranchisement. All this is just to illustrate relevant as opposed irrelevant elements of competence for internally justified restrictions: I am not endorsing the particular conception of relevant competence the CAT-V test presumes.

I wish to examine the further features of the Pointlessness Argument based on the most elaborate version available in the literature, to the best of my knowledge: namely, Thomas Christiano's argument for the disenfranchisement of children and people living with severe mental disabilities.

[28] *Doe* v. *Rowe*, 156 F. Supp. 2nd 35; US Dist. (2001)

2.3.2. Christiano's version

Thomas Christiano (2008) proposes a version of the Pointlessness Argument in order to support the intuitive moral acceptability of excluding the underage citizens as well as persons with severe mental disabilities from the franchise (pp. 128–129). The argument can be reconstructed as follows:

> (P1) Children and the mentally disabled are not capable of "elaborating, reflecting on, and revising ideas about justice".
>
> (P2) The facts of judgment only apply to those capable of these things.
>
> (P3) Those to whom the facts of judgment do not apply have no interest in political participation (voting).
>
> (P4) Those who have no interest in political participation are not required to have a right to participate.
>
> (C) Children and the mentally disabled are not required to have a right to participate.

What are the facts of judgment the argument focuses on (see (P2) especially)? They are characteristics of human moral judgment which make it difficult for anyone to make a moral judgment that others could easily accept as correct, and make it difficult for anyone to accept others' moral judgments as correct. Specifically, they consist in "disagreement, diversity, fallibility, and cognitive bias when it comes to determining features of our common world" (ibid., p. 78). As Christiano claims, these facts of judgment apply only to those who are capable of elaborating, reflecting on, and revising ideas about justice:

> […] the facts of judgment do not apply to those who are less than minimally competent. The basic standard of minimal moral competence is that an individual is capable of elaborating, reflecting on, and revising ideas about justice. Once a person is capable of doing these things, the problems of the facts of judgment arise and there is a basis for respect for the judgment of that person. (ibid., p. 128)

Why is it significant that the facts of judgment do not apply to someone, in justifying their voting rights? As Christiano claims, "If a person is not capable of this kind of reflection on justice, then the facts of judgment do not apply to their appeals and there is no basis for the kind of respect for judgment we accord to those who are able to reflect on these matters" (ibid., p. 128). It is worth quoting Christiano's elaboration on the link between facts of judgment and the interest in political participation at some length:

> […] the facts of diversity, disagreement, fallibility, and cognitive bias and the interests in being able to correct for others' cognitive biases, being at home in society and in having one's equal moral standing publicly recognized and affirmed ground the principle that each should have an equal say in a collective decision-making process concerning the organization of society. Moreover, each has an interest in learning about his interests as well as justice, which is best realized in a process of discussion with others wherein others take one's views seriously and respond to one's views about justice and interests. Given these facts of judgment and interests in judgment, each person's judgment about how society ought to be organized must be taken seriously. If someone's judgment is not permitted a say in society, then the interests described above will be set back. (Christiano 2008, p. 88)

Further,

> Democracy is a realization of public equality because the interests that ground democracy are preeminent political interests that publicly stand out when the facts of judgment hold. So the grounds for the priority of democracy are that democracy realizes public equality and the issues over which democracy exercises legitimate power do not have answers that realize public equality. (ibid., p. 98)

So, the basic idea is that once you have a minimal moral competence, you can make judgments on the justice of public policies and candidates' programs accordingly. If you can make such judgments, this in turn gives rise to certain interests of yours because the facts of judgment apply to you.[29] These interests are worthy of equal consideration, regardless of who

[29] I am not sure, however, that for you to have an interest in "being able to correct for others' cognitive biases" (Christiano 2008, p. 88). it is necessary that the facts of judgment apply to you. It is only necessary that they apply to *others* with a capacity to judge, and that you can somehow correct for their cognitive biases, whether

has them. And the (or at least one) way to give equal consideration to these interests is publicly identifiable even amidst the facts of judgment. This is to enfranchise you.

But what is meant by the claim that children and severely mentally disabled people do not have a minimal moral competence? There are at least two possible accounts of this claim, with different theoretical advantages and extensional adequacy.

(1) *Minimal competence as the capacity to* reliably *make moral judgments.* First, on a more demanding interpretation, minimum moral competence may mean that individuals do not only have the relevant capacities, but also exhibit some minimal, sufficient level of competence or reliability in their exercise, and perhaps some minimal level of background knowledge which is needed for their reliable exercise. For example, minimally morally competent individuals are not only capable of means-ends reasoning, but actually use it with some degree of reliability in their reasoning about the justice of particular policies. Further, they do not only know how to validly infer conclusions from moral (normative) and descriptive premises, but they also know some relevant moral (and descriptive) premises. In other words, minimally morally competent individuals also have some minimally sufficient background knowledge.[30]

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you have a capacity to judge or not. Note that even if the facts of judgment did not apply to you because your judgment is *superior*, and not inferior, for the lack of any cognitive biases, you would still have an interest in being able to correct others—even more so. I will set this issue aside.

[30] Christiano (2008) also emphasizes that children and adults living with severe mental disabilities do not have a sufficient knowledge about their own interests, about which they deliver judgments (p 128, see also n. 33 on p. 129). While this is true, the relevance of this claim is unclear. If judgments grounding voters' choices should not be based on reasons of self-interest, but only on moral reasons, as I claimed in Chapter 1, ignorance about your own interests does not necessarily decrease your competence in exercising your franchise. Neither is it clear that it would considerably neutralize your cognitive biases, and thus allow you to make better (more impartial) moral decisions, if you had more knowledge about your own interests. Arguably, knowledge of *others'* interests may be relevant to choosing between policies based on their justice—but, as Christiano argues elsewhere (1996), voters should ground their vote by judgments of moral principle, and not policy (pp. 169ff). In any case, the critique of the more demanding interpretation of minimal moral competence that I lay out below also stands if knowledge of your own interests is a constituent of voting competence. For an internally justified competence-based restriction which would justify disenfranchisement on the basis of inability to form justified beliefs about one's *own* preferences, see Goldman (1999), Ch. 10, esp. pp. 320ff. Lau and Redlawsk's (1997) study explicitly assumes that voters "fulfill their democratic duties", or vote "correctly", when they vote for those who are mostly like to promote their fully informed interests (p. 585).

This account of minimal competence would better suit the extension of competence-based restrictions the argument concludes to: it would justify the exclusion of a wider age group of children, as well as a more extensive group of adults living with mental disabilities. But adopting this interpretation would have severe consequences. On the one hand, it would make it unclear why the facts of judgment do not apply to someone who *is* capable of making moral judgments, just not reliably. On the other hand: whereas the difference between having or not having a capacity identifies a clear threshold, there is no similar natural threshold between the sufficiently or insufficiently reliable exercise of a capacity. So, the argument cannot justify Non-Scalar Disenfranchisement by reference to this threshold.

(2) *Minimal competence as the capacity to make moral judgments*. On this account, the lack of moral competence means that children, for instance, cannot make *any* moral judgments. Of course, this holds true only below a certain age. Children above a certain age, as well as adults with much lower than average mental capacities but above a certain threshold do have a psychology which makes them capable of making moral judgments. In other words, they are capable of considering reasons for and / or against a particular moral decision, and infer a conclusion based on these reasons. They are just not very *good* at making moral judgments: the relevant capacity is present, but its *reliability* is deficient.

This account of minimal moral competence does not—and probably does not even want to—explain, then, why the facts of judgment do not apply to children at least above a certain age,[31] or to adults with much lower than average mental capacities but above a certain threshold. The facts of judgment apply to, say, adolescents and adults with much lower than average mental capacities with a *higher* force than to statistically normal adults. Children or the mentally disabled, once able to make moral judgments, may find it more difficult to overcome or even notice their own cognitive biases; and they may well be more fallible in

[31] See Fowler 2014 (p. 109) for a similar critique of López-Guerra (2010).

their judgments; moreover, their judgments are just as much subject to disagreement as anyone else's. So, the facts of judgment apply to them—this counts for, and not against their enfranchisement. The very fact that some children and mentally disabled adults are capable of making moral judgments, and they are more prone to cognitive biases than others, grounds the relevant interests for political participation: for instance, an interest in learning about justice and in correcting for others' cognitive biases.

This minimalistic interpretation has a clear theoretical advantage: it justifies Non-Scalar Disenfranchisement. In order to do that, the argument in this interpretation distinguishes between scalar or continuous and threshold-like or non-continuous constituents of voting competence. On the one hand, background knowledge which is used in the exercise of the relevant capacities, or even the reliable exercise of the relevant capacities, are matters of degree: these components of voting competence are scalar or continuous. One may have more or less of them, one may be better or worse in these regards. On the other hand, the capacity to make moral judgments is not continuous. This interpretation of the argument assumes that there is a natural cut-off line between the presence or absence of a capacity.[32] Someone either has the capacity to make moral judgments or they do not. And the capacity to make moral judgments is certainly a constitutive element of voting competence, once we acknowledge that voting is justified as a way to make collective decisions based on reasons of justice (see Chapter 1). Background knowledge is meaningless if an individual is not in possession of the relevant capacities which could take background knowledge as their input in order to deliver

[32] This assumption is highly controversial, of course. See, e.g., Harry Brighouse 2002, who argues that "competence and rationality are matters of degree: the idea is that there is a threshold of competence and rationality above which it is appropriate to grant these agency rights, but below which it is not. The existence of a threshold does not mean that what is at issue is not a matter of degree; it just makes it appropriate to treat someone above the threshold qualitatively differently than someone below it" (p. 45). In a similar vein, Schrag 1975 claims that "the capacities of all adults might be sharply demarcated from those of all children. Unfortunately, both our own experience in society and the more rigorous evidence from psychology and human development testify to the contrary—namely, that development is gradual and highly variable from person to person […]" (p. 443). See also Rehfeld 2011, who insists that "[p]olitical maturity […] develops continuously" (p. 150).

informed judgments. By the same token, there is no point in asking how reliably someone exercises a capacity that they do not have at all. In other words, even if some constituents of voting competence are continuous, there is another constituent without which continuous constituents do *not* contribute *any* epistemic value to overall voting competence. And this further constituent, upon which the epistemic value of all the remaining constituents of voting competence depends, is itself non-continuous. Therefore, voting competence as a whole—or at least its value—is not scalar either, *below* a certain threshold.

Non-Scalar Disenfranchisement, on this account, simply tracks a natural cut-off line between the presence or absence of the capacity to make moral judgments. Therefore, this interpretation of minimal moral competence explains why people and other sentient beings without the relevant capacity may be disenfranchised. Further, it also explains why they are *uniformly* disenfranchised, rather than given votes with lower weight. If someone does not have the relevant capacity, other constituents of voting competence have no contributory value at all, and do not allow the individual to exercise the right to vote in accordance with its justification.

This leaves us with the second interpretation as theoretically superior: minimal moral competence consists exclusively in a set of capacities, and it is non-continuous. Probably, this also forces us to acknowledge that if the argument is sound, it fails to provide any reasons for the actual disenfranchisement of a vast number of children and adults living with mental disabilities.[33] So, this account is at least moderate revisionist in its extension. However, the

[33] The case of voting rights restrictions on children is further complicated by the fact that age is a very imprecise proxy, since different individuals develop the relevant capacity at different ages (Fowler 2014, p. 100). So: whatever the specific cut-off line is, there is no unique age that corresponds to it. Yet: that is not something law is supposed to care about. As long as differences are not extreme, and those adversely affected are not numerous, we may have good reasons to insist on a uniform age of enfranchisement. If there are vast differences, and / or there are numerous individuals affected, this could be reason enough to create institutional opportunities to overcome the presumption of incapacity below this age (cf. Brennan 2011a, p. 719).

Pointlessness Argument, even if minimal competence is interpreted according to the second reading, also faces two important limitations even in its superior version.

The first important limitation is that the Pointlessness Argument cannot justify Non-Scalar Enfranchisement. This is not a contingent, but an essential feature of the argument, which is very clear in Christiano's version. No premise of the argument denies that voting competence has continuous or scalar constituents. Additionally, the argument positively relies on the assumption that individuals' voting rights are justified, in part, *by virtue* of the fact that they have voting competence. So, the following question arises: Why is it that differences in the distribution of the scalar components of voting competence—e.g., relevant background knowledge as well as other determinants of the reliability of the exercise of moral capacities—do not justify differences in the distribution of voting rights *among those enfranchised*? Why could not we make differences, for instances, between the weights assigned to the votes of more and less competent voters? The Pointlessness Argument is entirely silent on this question, and has to be, given its assumptions. This is not an objection, but only a reminder of the inherent limitations of the argument. Christiano offers a separate argument in favor of Non-Scalar Enfranchisement[34]—and so must any other proponent of any version of an internal justification of competence-based restrictions on the right to vote do, unless they claim, extremely implausibly, that there are no scalar or continuous constituents of voting competence.

The second, much more important challenge the Pointlessness Argument has to face is that its conclusion is weaker than the moral intuitions it claims to justify. The argument is meant to justify that children or people with severe mental disabilities *should not* be enfranchised. In other words: it is a moral requirement that they should be disenfranchised. As Christiano (2008) puts it: "I have argued that children and insane adults ought not in general have voting

[34] I will examine and criticize Christiano's further argument in Chapter 6 in detail.

rights" (n. 33 at p. 129). In fact, however, this conclusion does *not* follow from either his version of the Pointlessness Argument, or from any particular internal justification of competence-based restrictions on the franchise. This is because internal justifications can only show that, given a particular justification of voting rights, we have no reason in favor of granting these rights to some individuals. In other words, they remove moral objections against disenfranchisement. Yet they do not and cannot show that we have any reason *against* enfranchising those whose enfranchisement is not required. Internal justifications, including the Pointlessness Argument, can go as far as concluding that the disenfranchisement of very small children and very severely mentally disabled adults is, *ceteris paribus*, morally *permissible*. It takes a further argument to show that there is not merely a moral permission, but also a moral requirement to exclude them from the franchise. Internal justifications may thus show why these electoral exclusions do not make democracy any worse, but they cannot show why the same exclusions make it any better, as moral intuitions and (a part of) legal practice seem to show.[35] They may serve, though, as one step in a fuller argument which justifies a requirement of exclusion.

2.3.3. Internal Justifications and Avoiding the Expert/Boss Fallacy

Internal justifications assume that some form of competence is not only a constraint on exercising political authority, but it is the very ground of justifying the exercise of political authority. This may give rise to the concern that internal justifications of competence-based restrictions on the franchise fall prey to what David Estlund (2008) calls the Expert/Boss Fallacy. The fallacy consists in concluding from the following premises to the following conclusion (p. 30):

[35] Cf. Chan and Clayton (2006): "The worry about extending the franchise is not that sixteen and seventeen-year-olds would not use their vote, but that too many of them would vote and do so incompetently, in a way that would be *detrimental to our democracy*" (p. 53; emphasis mine [A. M.]). See also Beckman (2014), who regards the exclusion of those who do not meet the criteria of inclusion specified by internal justifications as a *right* of those who are included, rather than as their *obligation*.

(P1) There are procedure-independent standards by which political decisions ought to be judged.

(P2) Some people know those normative standards better than others.

(C) The normative political knowledge of those who know better is a warrant for their having political authority over others.

It is clear that I have endorsed (P1) in Chapter 1: political decisions should be judged on the basis of their justice, i.e., moral standards. I also take it as intuitively obvious that something akin to (P2) is true. Moreover, that (C) is true. Does the Pointlessness Arg. also hold that (C) follows from (P1)&(P2)?

Internal justifications of competence-based restrictions on the franchise may appear to exhibit the argumentative scheme above. Now, the danger is that this argument in fact justifies some form of aristocracy rather than democracy. People are endowed with political power, it may seem, simply due to their epistemic superiority in the moral domain. Internal justifications of competence-based restrictions, you may object, are unacceptable because they rely on justifications of the right to vote which are epistocratic rather than democratic. They are intuitively unconvincing for this reason not as accounts of competence-based restrictions, in the first place, but as accounts of democratic rights.

Yet internal justifications do not directly argue from the existence of competence to the entitlement to exercise political authority, which would not only be fallacious but counterintuitive too. Instead, internal justifications consist of a two-step argument. In the first step, the argument establishes that the entitlement to exercise political authority is dependent on some particular moral or political status. In the second step, the argument establishes that the status in question, in turn, is dependent on some form of competence, an epistemic condition. Crucially, however, if the required competence did not ground the status in

question, then it could not *directly* ground an entitlement to political authority. Let me put it this way: political authority is *non-transparently* grounded in some form of competence.

You could still object, that the non-transparent nature of the grounding relationship between competence and political authority is irrelevant in so far as the competence in question is not an unnecessary but sufficient condition, but rather a necessary condition of acquiring the authority-grounding status. The authority-grounding status is not multiply realizable, to borrow a term from the philosophy of mind. Therefore, you may object, at the end of the day, it is still some epistemic merit which grounds rightful claims to political authority, albeit indirectly. This much can be conceded, at least in Christiano's Pointlessness Argument.

I am happy to bite this bullet. But the objection misses the point: what matters is not that the status which grounds political authority is not multiply realizable in the sense that it could not be acquired by instantiating some alternative, epistemically irrelevant feature. Instead, what matters is that if the epistemic merit which grounds the authority-grounding status did not ground that status, it could not directly ground political authority either. For example, differences in voting competence can be observed even above the minimal competence threshold that the Pointlessness Argument specifies—so these differences, we can assume, do not ground differences in political status.[36] As a consequence, the Pointlessness Argument does not call for the unequal distribution of the right to participate in the exercise of political authority, even though the latter could be distributed unequally, for example, by distributing weighted votes in proportion to voting competence. (Neither does the argument prohibit such a distribution, as I said before—but that is immaterial in connection with the objection considered here.) So, the objection can be fended off because internal justifications do *not* conclude from (P1) and (P2) to (C).

[36] In fact, they might—but then they would ground political authority by virtue of grounding that further status.

Another, alternative reading of the objection may go as follows. It is not true that epistemic merits do not matter if they do not ground the relevant status. It's just that the relevant epistemic merit is not scalar in nature. You can't have *more* of a capacity: if you could, you may be eligible to have more votes than others. So, there is no such epistemic merit *of the relevant kind* that grounds a claim to political authority, which does not ground the relevant status.

In fact, I think this version of the objection makes an important point—but its conclusion may not follow. Imagine that some beings have truly superior moral capacities to humans, say, angels or demigods. They do not merely use the same capacities better than the average human being. They have different capacities which, say, give them direct access to moral truths. Nor do demigods have cognitive biases. In sum, they are infallible in moral judgments. Demigods do not (reasonably) disagree either; they all have access to moral truth, which not only is but also appears all the same to all of them. What would follow if such beings decided to establish a political community? They may not need one, in the first place: they may agree without collective decision-making and coercive enforcement what equal consideration of their interests requires.[37] But assume they do establish political communities. Still, they may have no interest in participation at all. As long as demigods have common knowledge among them that they are all perfect knowers of moral truths, including political justice, voting is superfluous. They will be treated as equals if the requirements of equal treatment will be directly enforced—to which none of them would have reason to object.

[37] Two caveats are in place here. First, I set aside here the concern that *motivation* to act on the moral truth would also matter. Let us simply assume, for now, that demigods are not only perfect knowers but also perfects doers of morality. I will lift this assumption somewhat later. Second, just as much as demigods probably would not need a political community, a community of humans all of whom lack the relevant capacity would not be *able* to have one. Members of a prospective Republic of Toddlers could not form a democratic political community even if they wanted to. The circumstances of democratic politics includes, it seems, the scarce availability of specific cognitive resources. Neither more nor less will do.

What if demigods and human persons form a political community together? Assume, first, that their differences in moral capacity do not justify the unequal consideration of their interests.[38] If this is the case, the implications of the requirement of equal consideration may be very different for the participatory rights of the different groups. Humans with a minimal moral capacity would still have interests which would *pro tanto* justify their participation—but they would also have an interest in leaving political decisions to demigods who have a very (publicly) clearly superior moral capacity.[39] This is different from the case of a population which comprises both those with and those without a minimal moral capacity: the latter, according to the Pointlessness Argument, have no interest which would justify participatory rights even *pro tanto*. However, I do not need to settle what distribution of participatory rights would follow all things considered from the equal consideration of human and demidivine interests. It is enough to acknowledge that the differences in moral capacity between members of the two groups is in principle relevant to the distribution of participatory rights. So, in all fairness, the objection is right: the *relevant* kind of epistemic difference may always matter for the distribution of political participatory rights.

Yet this acknowledgement is still in line with my claim that more moral knowledge in itself does not justify any distribution of participatory rights. In my example of a political society shared by demigods and humans, it is the different political *status* of the different kinds of beings that may ground differential participatory rights. If there are any demigods, there surely are lazy ones, too: they may not care to think about the moral truth even though they are *capable* of accessing it. So, some very conscientious human voters may be *better,* morally more informed than some of the lazier demigods. But this is irrelevant for the distribution of

[38] Christiano (2014) may disagree with this assumption.

[39] Moreover, demigods may also have interests which would *pro tanto* justify not only that they, knowers of moral truths, have more say in collective decisions, but also that those with (in their eyes) clearly inferior moral capacity not participate at all. The intensity of this interest, however, depends on the numerical proportions of the two competence-groups in the population.

participatory rights, which track differential status, and not merely differential epistemic merits.

Finally, note that internal justifications need not endorse (C) at all. Status is grounded by the possession of an epistemic capacity, but these justifications do not require anyone to put the relevant capacity to use. In fact, this is exactly what grounds a familiar objection to competence-based exclusion from the franchise. To wit, if, unfortunate as it is, there is no difference in knowledge between masses of statistically normal adults, on the one hand, and children and people living with severe mental disabilities, on the other hand, in moral knowledge relevant to voting, then why can members of the former group vote, but not members of the other? Internal justifications of competence-based restrictions answer the question by showing that the relevant difference between these two groups is not a difference in knowledge, but a difference in status, which in turn is grounded by a difference in capacities.

2.4. Conclusion

This chapter has explored internal justifications of competence-based restrictions on the franchise through a critical analysis of the most elaborate version of such justifications, Thomas Christiano's Pointlessness Argument. The contribution of my critical analysis is fourfold.

First, I have identified and described in detail the general characteristics of internal justifications as error theories of electoral inclusion. Any argument which instantiates these general characteristics of the argument scheme also exhibits the same theoretical advantages and limits that I described.

Second, I have defended internal justifications as viable arguments for a *pro tanto* moral permission to uniformly exclude small children and people living with severe mental

disabilities from the electorate. In this respect, I owe the reader a significant debt which I wish to repay here. Namely, as I said in the beginning of this chapter, internal justifications as error theories also have to give us the right means to explain the normative illusions they are meant to dispel. While some may view the disenfranchisement of children and the severely mentally disabled as intuitively compelling, others have seen their exclusion as a remnant of unjustifiable electoral exclusions. It would be an advantage of internal justifications if they could also explain how the latter illusion arose. The explanation needed here, of course, is not psychological in kind: instead, we want internal justifications to unveil a specific theoretical construct or argumentative strategy as conducive to the illusion.

Internal justifications can bear this burden: they do offer the right kind of explanation of the illusion in question. The source of the illusion is that once we regard universal enfranchisement as given, there seems no way to allow for competence-based discrimination. The proponent of the electoral inclusion of even small children or people living with severe mental disabilities relies on the assumption of universal enfranchisement over the *unrestricted* domain of the entire citizenry, and requires the consistent application of the equality of the franchise. Yet internal justifications do not in fact justify restrictions on the equality, but on the *universality* of the franchise, and show that opponents fail to grasp the right reasons in favor of universal franchise, which at once pose limits on it.

Third, I have defended internal justifications of competence-based restrictions on the right to vote against the charge that they have an undue epistocratic leaning. I have showed that the epistemic qualities of the voter they require ground a certain status; and it is this status, in turn, which justifies enfranchisement. Were it not for grounding a special status, epistemic qualities could not directly ground a rightful claim to the exercise of political authority, jointly with other citizens or alone. This, I think, establishes as much distance as democrats want to keep from epistocrats.

Fourth, I have showed three significant practical and theoretical limits of internal justifications. One: in practice, they can only justify a very low threshold of inclusion. Having a minimal moral capacity cannot, as I have argued, entail a requirement to be *good* at moral reasoning. Accordingly, most adolescents, one would think, could not be excluded from voting, as far as internal justifications go—and this may be a conservative estimate. To this extent, internal justifications are *more* revisionist than they seem to be, compared to current legal practices worldwide. I do not think this is either a clear advantage or a clear disadvantage. As long as competence-based restrictions which use age as a proxy are justified, there is always a grey zone on the scale of age where our intuitions are unclear about exclusion or inclusion. Consequently, if a given theory justifies drawing the line somewhere in particular *within* the grey zone, the outcomes cannot be considered either intuitive or particularly counterintuitive.

Two, more importantly: internal justifications cannot justify non-scalar enfranchisement above the threshold—although neither can they justify scalar enfranchisement, in proportion to voting competence. This is simply because, as I have pointed out, internal justification show the normative basis and limits of the universality of the franchise, but not its equality. Three: even more importantly, internal justifications can only show that it is permissible, but not that it is morally required, to exclude those from the franchise who lack minimal moral capacity. Thus internal justifications are incomplete: further arguments are necessary to show the *pro tanto* moral desirability—if there is any—of the exclusions they *pro tanto* permit.

3. The Symbolic Argument against Restrictions

3.0. Introduction

In the previous chapter, I discussed an argument for the *pro tanto* permissibility of competence-based disenfranchisement. In this chapter, though, I examine a fairly widely used argument to the contrary. There is strong intuitive support for the claim that competence should be irrelevant to the distribution of the right to vote given the *expressive* or *symbolic* significance of this right and/or its distribution. This intuition is reflected in the abundance of literature which explicitly reflects on the symbolic significance of political equality in general, and on the exclusion of children and those living with severe mental disabilities from the franchise, in particular (see, e.g., Dworkin 2000; Fowler 2014, pp. 98–99; Nussbaum 2009). This literature seems to mount an especially strong case against competence-based restrictions on the right to vote of the severely mentally disabled. Having the vote has a clear symbolic significance, and so does not having one. It is a moral failure of the state to convey the message, by disenfranchising those living with severe mental disabilities, that they are citizens or individuals of inferior status. Therefore, people with mental disabilities, even if they lack the competence that would ground either their interest in participation or any other indirectly competence-related justification of their enfranchisement, should not be restricted in their exercise of the franchise—so the argument goes.

In this chapter, my aims are threefold. First, I will distinguish between various types of the argument crudely introduced above, to be referred to as the "Symbolic Argument". I will make a distinction between positive and negative versions, general and specific (popular sovereignty-based) versions, existence-oriented and equality-oriented versions, and finally, holistic and particularistic versions. As these distinctions are all orthogonal to one another, this would add up to sixteen different versions of the argument. A clear distinction between

these versions is hoped to allow for a more precise critical evaluation of the existing literature on the Symbolic Argument, both its more general use in the literature on the justification of voting rights, and its use in more particular debates focused on competence-based restrictions. I will not lay out and examine all sixteen versions individually. Instead, I will examine the merits and drawbacks of either option along each and every dimension out of the four dimensions that I use to classify versions of the argument, and make a case for the options that, taken together, allows for a most plausible, strongest version of the Symbolic Argument.

Second, I will argue that the strongest version of the Symbolic Argument, identified here, still falls behind the expectations its proponents would like it to meet. In particular, I will establish that the Symbolic Argument can. at best, justify only a *pro tanto* prohibition on restricting the right to vote of the severely mentally disabled. Further, I will show that we have reasons to assume this *pro tanto* prohibition to be a relatively weak one, once balanced against other types of reasons bearing on competence-based restrictions on the right to vote. Ultimately, however, I will not engage in a full balancing exercise at this point: I will restrict myself to the exploration of the most defensible versions of the Symbolic Argument as providing *pro tanto* reasons against competence-based restrictions, and on showing its inherent limitations.

Third, I will also argue that the Symbolic Argument is not valid in its strongest form. Its proponents need to show why the symbolic expressive content of disenfranchisement cannot be undercut altogether by offering the right kind of justification—if it is available at all—, as well as by providing symbolic compensation, for disenfranchisement. My argument is not fatal against the Symbolic Argument, but it shifts the burden of proof on to the proponents of the Symbolic Argument. Neither is it fatal for the view that disenfranchising those with severe mental disabilities is unjustified. Instead, my argument suggests that other justifications for that view are much stronger.

3.1. The Typology of the Symbolic Argument

The Symbolic Argument can be offered in two different forms along at least each of four different dimensions. Some authors do not specifically position their version of the argument at all along these dimensions (e.g., Nussbaum 2009), whereas others can be more clearly classified as offering a particular version of the argument identified below (see, .e.g., Dworkin 2000, or Kis 2003).

First, it is helpful to distinguish between positive and negative versions of the argument. Positive versions are characterized by the assumption that states have a duty to give positive, symbolic expression of the equal status of their citizens. Negative versions, by contrast, are distinguished by the assumption that states merely have a duty *not* to give a symbolic expression of the *un*equal status of any of their citizens.

Second, we may distinguish between general and more specific versions of the Symbolic Argument. The generality—specificity dimension has to do with how specific the justificatory principle of the required symbolic treatment is: is it derived directly from the most general principles governing state action, or is it derived from a lower level, more specific moral principle? The general version, as its name suggests, assumes that the prohibition on competence-based disenfranchisement follows directly from states' general expressive obligation (whether positive or negative in kind). On this version, it is assumed that states do not merely have an obligation to substantively treat those subject to their authority with equal concern and respect, but additionally (or alternatively, as a constitutive element of this treatment), they also have an expressive obligation concerning the equal concern and respect they should adapt towards all subject to their authority. (Or, in other words: expression is considered part of treatment, which has to conform to citizens equal status.) The more specific version of the argument assumes, instead, that the expressive obligation in question must

follow from a more direct reason—in particular, from the principle of popular sovereignty. On this version, then, it is not equal concern and respect in general, but popular sovereignty in particular, that imposes a *special* expressive obligation on the state, which is fulfilled by providing citizens with unrestricted universal suffrage.

It is, of course, commonplace to think that the principle of popular sovereignty does a weighty job in determining the distribution of the right to vote. For example, it marks the borders of the electorate from the "outside", as it were, determining who should *not* have the right to vote in a given jurisdiction: namely, those who are not bound by the authority of, or whose rights and obligations are not determined by, political decisions made in that jurisdiction.[40] Popular sovereignty also marks the borders of the electorate from the "inside", insisting that *all* should be enfranchised in a given jurisdiction, and equally so, who *are* bound by the authority of political decisions made in that jurisdiction. I have considered these aspects of popular sovereignty in more detail in Ch. 1, and I will return to its substantive requirements in Chapter 4 and 7. But here I want to focus on a different specific aspect of the principle of popular sovereignty. Namely, that a special expressive obligation may also follow from it: the obligation to express (or not to express un)equal *political membership*:

> Symbolic consequences are declarative. The community confirms an individual person's membership, as a free and equal citizen, by according him or her a role in collective decision. In contrast, it identifies an individual who is excluded from the political process as someone not fully respected or not fully a member. (Penal systems have shaped and exploited this symbolic consequence for many centuries, by attaching a loss of vote to criminal conviction.) (Dworkin 2000, p. 187; see also Beitz 1989, p. 158)

[40] This is certainly a rather vague guidance, as there are subtly different ways in which someone may be bound by the authority of law (e.g., by personal vs. territorial jurisdiction etc.), and there is ample debate as to which forms of binding should be considered to constitute the "in-group" according to the principle of popular sovereignty. (E.g., permanent residents too, or only citizens? How about non-resident citizens? See, e.g., López-Guerra 2005) In any case, all I want to suggest here is that the principle does helpfully contribute to the delineation of the electorate.

In other words, on specific versions, it appears to be a requirement of popular sovereignty that states (not) express the (un)equal *political* status of those subject to their political authority.[41]

Third, one may distinguish between existence-oriented and equality-oriented versions of the Symbolic Argument. What I call existence-oriented versions of the Symbolic Argument aim to justify granting (at least some) people with the right to vote, as the right alternative to not granting anyone the right to vote at all. Compare: as a matter of equal concern and respect, citizens should have the right to freedom of speech.[42] By contrast, equality-oriented versions less ambitiously already assume that some citizens have the right to vote, and accordingly, they aim to justify only that there is a reason against denying the franchise to *others* on grounds of lacking competence. On this version, the Symbolic Argument only justifies (and is expected to justify) the equal distribution of the right to vote—more specifically, its "one-person-one-vote" (no more, but no less either!) requirement, but not the equality of the weight of the votes (see Kis 2003, pp. 66–67, 72).

Fourth, the Symbolic Argument may come in holistic or particularistic versions. The holistic versions assume that the expressive obligation of the state applies to state action widely understood as a whole. This may or may not imply, depending on further assumptions, that some particular state action should also be under the purview of the expressive obligation. Particularistic versions, nonetheless, assume that the state's expressive obligations apply to either some particular actions that constitute the entirety of state action or "treatment" by a political authority, or each of these actions severally and individually.

[41] Cf. with Kis 2012, who argues that it is an expressive requirement of state neutrality that no laws are made in the name of a more restrictive class than the entirety of the political community. I take it that popular sovereignty requires, in a similar fashion, that no-one is expressed to be an inferior member of the political community.

[42] The analogy seems crude, since we cannot imagine that any democratic principle would justify the enfranchisement of a citizen *regardless whether anyone else has the right to vote*. Note, though, that the same is true about freedom of speech or even property rights: if an account justifies their existence, it is intuitive that they should be granted to everyone, not just some. But the point is that an account justifying the existence, need not assume or account for the fact that the same right should also be *equally* distributed. That further job may be done by a different account.

The four dimensions identified above—positivity vs. negativity; generality vs. specificity; existence- vs. equality-orientedness; holism vs. particularism—are logically independent, and either option along any of these dimensions may be logically consistently combined with either option along almost any other dimensions.[43] Yet not every possible combination is as well-motivated as any other. In the following sections, I undertake to explore the logical terrain these combinations constitute. Instead of assessing individually all the 16 versions of the argument that these dimensions map out, I will assess the virtues and vices of the different versions along each dimension to have a principled way of eliminating implausible versions of the Symbolic Argument, and thereby reduce the variations that should be subject to further inquiry.

3.2. The Positivity-Negativity Dimension

Along the first dimension, the negative version appears undoubtedly more plausible. Intuitively, it is only true in special cases that state action should positively express equal concern and respect, *in addition to* substantively realizing it. Such a requirement most plausibly comes in the form of a remedial duty. For instance, after a gross failure of the state to protect the rights of minority citizens, the latter may be due, as one compensatory measure among the many, a positive expression of their state's equal concern and respect toward them. To take an example from Hungarian domestic politics: in 2011, right-wing extremists organized a march on the Roma settlements of a forlorn village in the North-East, Gyöngyöspata. Equal concern and respect would have required, arguably, state action in their protection. Yet the police refused to interfere with the life-threatening racist threats, leaving the Roma population on their own. In addition to substantive remedial duties after the

[43] I write "almost", since, for example, holistic versions do not seem to cohere well, and might also be logically inconsistent, with specific versions. The more holistic the obligation, the more general its justificatory principle is likely to be. In any case, identifying all the logically consistent combinations, and excluding all inconsistent ones, is not necessary for my arguments to go through. I hope that the versions of the argument I will put under more detailed scrutiny are very clearly logically consistent and also coherent.

incident, I assume, the state also had an obligation to *express* equal concern and respect in a symbolically especially strong tone, voiced by a leading political figure (head of the government, the legislature, or the republic). But this is the realm of non-ideal theory. In ideal conditions, no such positive expressive obligation seems to exist.[44]

A negative expressive obligation, in contrast, appears intuitively plausible in ideal theory too. States, after all, should strive not to insult their citizens by expressing unequal concern and respect for them. The opportunity to indulge continuously and without special reasons in expressions of our equal status in the eyes of the state is not something states owe their citizens. But it is clearly an obligation of states to refrain from symbolic wrongs, as much as any other wrongs, done to their citizens.

Note also that assuming the existence of a positive expressive obligation coheres better with a particularistic and specific version of the Symbolic Argument. It is less counterintuitive to assume that the state has a positive obligation to express, on a permanent basis, equal concern and respect in one particular kind of policy or state action—such as the distribution of the right to vote—and due to a special justificatory consideration—e.g., popular sovereignty. The most counterintuitive positive versions of the Symbolic Argument are the all-encompassing particularistic version (*each and every* state action / policy should positively express equal concern and respect), and /or the general versions.

Still, as applied to the distribution of the right to vote, the negative version of the Symbolic Argument seems particularly intuitive. It is more intuitive to analyze the symbolic significance of the distribution of the right to vote as the fulfillment of the state's negative

[44] An interesting borderline case could be a positive requirement to enact legislation which prohibits and deters non-state actors from acting in symbolically discriminative ways toward others. Prohibitions on segregation by private actors would fall into this category (too, while anti-segregation legislation also serves substantive, and not only expressive or symbolic purposes). It is debatable whether this is a derivate positive requirement derived from an ultimately negative one—deciding on this is not central to my argument.

obligation to refrain from symbolically degrading some of its citizens (or all of them, on an existence-oriented version) by denying them the right to vote.

3.3. The Generality-Specificity Dimension

The general versions of the Symbolic Argument rely on a more abstract requirement of symbolic equal treatment as their normative justification without referring to popular sovereignty or other mediating, derivative principles. These versions face at least one major challenge. Namely, it is unclear how they bridge the distance between their extremely abstract justificatory principle and a specific policy such as the enfranchisement of the severely mentally disabled. In other words, they raise the following question: why is enfranchisement of the severely mentally disabled *necessary* for the state to meet its expressive obligation?

There is certainly plenty of logical space for other ways to meet the expressive obligation than by enfranchisement. First, states may express equal concern and respect for a group of citizens by ensuring that the *substantive content* of the law meets the requirement of equal consideration of interests. Second, establishing and maintaining alternative institutional, *procedural* solutions—such as a children's ombudsperson or an office for the protection of the interests of persons with disabilities—may also seem adequate ways to express equal concern and respect for some otherwise disenfranchised groups of citizens. Third, states may express equal concern and respect for a group of citizens by ensuring that all restrictions on the franchise are justified by the *right kind of reasons.* General accounts, you may argue, have a hard time showing that enfranchising the severely mentally disabled is a necessary condition of states fulfilling their expressive obligations—I will refer to this difficulty as the Unnecessity Objection.

Note, however, that the Unnecessity Objection does not apply symmetrically to positive and negative versions of a general Symbolic Argument. While it has more force against a positive

version—why should a state express its equal concern and respect, of all possible ways, exactly by means of enfranchisement?—, it has considerably less force against a negative version. If there is a general prohibition on negative expressive acts, then the burden of proof is on those who wish to argue that franchise restrictions should be exempt from the general prohibition. So, negative, general versions of the Symbolic Argument are better equipped to meet the Unnecessity Objection. These versions of the Symbolic Argument do not, strictly speaking, answer the objection: instead, they fend it off it by showing it to be irrelevant to the versions of the argument concerned.

Specific, popular sovereignty-based versions of the Symbolic Argument can also fend off the Unnecessity Objection. Specific versions may readily explain the necessity of using enfranchisement as an expressive means—in a positive version; or the special symbolic significance of disenfranchisement, in a negative one. Assume popular sovereignty prevails only if the state expresses that everyone subject to its political authority can, at the same time, partake in that authority. Then there is little wonder why the enfranchisement scheme, rather than anything else, should be the right target of normative assessment to check if a state fulfills its expressive obligation.

However, the specific versions of the Symbolic Argument must face a different problem. As the justification is so close to the very policy it supports in the latter cases, these versions of the Symbolic Argument have the hardest time providing a genuinely informative, independent account in support of the enfranchisement of people living with severe mental disabilities. In other words, we would like to know more about the *reasons* for the existence of the expressive obligation as a requirement of popular sovereignty.

3.4. The Existence-Orientedness vs. Equality-Orientedness Dimension

Some versions of the Symbolic Argument primarily aim to establish that there is a reason to grant individuals an authoritative decision in the exercise of political authority binding them. In other words, it is the very existence, rather than the equal distribution, of the franchise that is in the focus of these versions. The very existence of this right is justified, in these versions, by reference to states' expressive obligations. This is why I will keep referring to these versions of the argument, for lack of a better word, as "*existence-oriented*". Existence-oriented versions suffer from two, related problems: the Insufficiency Objection and the Contingency Objection.

The Insufficiency Objection reads as follows. If the lack of franchise expresses a lack of equal concern and respect for citizens (or fails to express its presence), then the reason for that must be some historical wrong realized by the lack of franchise. Whatever that wrong is, it testifies to the existence of an independent moral reason for considering past enfranchisement wrong. And that seems to be exactly the reason which explains the moral significance of enfranchisement. The symbolic significance of the franchise cannot do all the justificatory work—it merely piggybacks on the justificatory work done by the other, independent moral reason for enfranchisement. So, even in those cases where the facts relevant to trigger the Symbolic Argument in favor of enfranchisement, the Symbolic Argument is insufficient to justify enfranchisement: non-symbolic considerations are necessary to get the symbolic ones off the ground.

The Contingency Objection grasps a different aspect of the insufficiency of the existence-oriented Symbolic Argument. Imagine—contrary to what I presumed in the Insufficiency Objection—that there is *no* independent moral reason for enfranchisement apart from its symbolic, expressive significance. The symbolic, expressive content of enfranchisement or

disenfranchisement, I ask you to imagine, is purely conventional: it depends on the socio-historical circumstances of a given polity. So, whereas in some polities, enfranchisement is fraught with deep symbolic significance, in other polities, it carries no symbolic, expressive content at all. Accordingly, there are moral reasons in favor of enfranchisement in one polity, but potentially not in another—not even *pro tanto* reasons. And this is wildly counterintuitive: if enfranchisement is valuable, it is—at least *pro tanto*, *ceteris paribus*—valuable universally, without contingent variations.[45] To use Brighouse's (1996) phrase, "in principle, if our history had been different, it would not be objectionable" to disenfranchise (p. 122). So, this provides us with another reason why the existence-oriented Symbolic Argument cannot serve as a sufficient reason for enfranchisement. If the Symbolic Argument does not piggyback on a universal, non-contingent moral requirement, then it cannot justify the intuitively right extension for the requirement of enfranchisement, which should be universal, and historically non-contingent.[46]

It is helpful to think about the Insufficiency Objection and the Contingency Objection as a dilemma: if symbolic considerations rely on an independent moral consideration, then the extension of the Symbolic Argument is the right one—but then within that extension, it offers only insufficient reasons for enfranchisement (hence the Insufficiency Objection). If, on the other hand, symbolic considerations do *not* rely on an independent moral consideration, then the extension of the Symbolic Argument is the wrong one—and hence, the argument is insufficient to show that we universal reasons of enfranchisement regardless of political history (the Contingency Objection).

[45] See also Kolodny (2014), who writes, in a similar vein about the symbolic significance of equal opportunity for political influence: "we can view equal opportunity for influence as a purely arbitrary symbol of citizenship (somehow otherwise conceived): a mere historical accident. But this is hard to credit. For one thing, it makes it a mystery why people have strived, and do strive, for equal influence in societies in which it had not, or has not, acquire the status of an emblem of equal citizenship or membership" (p. 221).

[46] Note that the Insufficiency Objection above does *not* criticize the extension of the Symbolic Argument, unlike the Contingency Objection. Instead, it takes the extension as given, and argues that even within its extension, the Symbolic Argument supplies insufficient reasons for enfranchisement.

Note, however, that the Insufficiency Objection and the Contingency Objection do not undermine the existence oriented-versions of the Symbolic Argument. They merely show that the Symbolic Argument, in its existence-oriented versions, cannot tell the whole justificatory story about enfranchisement: it may only contribute to complex accounts of the right to vote. Such accounts offer a dual justification of the franchise. In the first step, it is the primary normative justification, independent from the symbolic significance of the franchise, which can explain the universality and original wrongness of disenfranchisement, and thus establish its symbolic significance too. In the second step, the Symbolic Argument, relying on the soundness of the primary reason, identifies a further, secondary sound reason for enfranchisement.

While generally speaking, complex accounts of the franchise which incorporate an existence-oriented version of the Symbolic Argument as their second justificatory step may well be sound, they are rather unhelpful in defending the enfranchisement of the severely mentally disabled. For the Symbolic Argument is intended to establish that *even if* other primary moral reasons for enfranchisement do not apply to children and the severely mentally disabled, the Symbolic Argument present a weighty consideration in favor of the enfranchisement of at least the latter group. Therefore, we must look beyond the existence-oriented versions of the argument in order to more convincingly argue the case in point.

Other versions of the Symbolic Argument which I will refer to as *equality-oriented* versions only aim to establish a strong case for the universality of the vote, assuming that there is an independent argument for enfranchisement. In other words, if there is no moral reason to grant *anyone* the right to vote, equality-oriented versions of the Symbolic Argument find no violations of a state's symbolic expressive obligations if the severely mentally disabled do not get it either. But, crucially, as opposed to the existence-oriented versions, these versions do *not only* establish a further reason for enfranchising the same class of persons whose

enfranchisement is already supported by an independent moral reason too. Instead, equality-oriented versions attempt to establish that if *some* have the right to vote, for some independent moral reasons, a state's expressive obligations require the extension of the franchise to *all others*. Equality-oriented versions have no ambition to provide a justification for the very existence of the right to vote, but only to justify a constraint on its distribution.

Most critics of competence-based disenfranchisement rely on equality-oriented versions of the Symbolic Argument: their language of criticism is that of discrimination. The Symbolic Argument can make their case strong, for the following two reasons.

Justificatory independence. Claims of discrimination normally assert that there are no adequate grounds to discriminatively allocate rights as between the members of two groups. The reason for this is typically taken to be either that—contrary to the assumptions of the discriminator—members of both groups have the *pro tanto* right-grounding moral features, or that there is no stronger overriding reason against restricting the *pro tanto* rights of members of the group discriminated against—again, contrary to the assumptions of the discriminator. However, proponents of competence-based restrictions deny either or both of these claims: they might maintain that there is an internal justification for the discriminative allocation of voting rights (see the previous Chapter for details), or that the discriminative allocation has an external justification. The special strength of the Symbolic Argument is due to the fact that it need not deny either claim.

Equality-oriented versions of the Symbolic Argument assume, instead, that *regardless* whether there are *pro tanto* internal justifications supporting restrictions on the franchise of members of one group, and *regardless* whether there are external justifications of the same restrictions, there are independent reasons against these less-than-universal restrictions. The Symbolic Argument, in this form, can acknowledge that the severely mentally disabled should

not necessarily be enfranchised *for the same reason* as their mentally healthier fellow-citizens. It merely attempts to establish that there is a strong enough reason to enfranchise them too.

Limited Justificatory Ambitions. Equality-oriented versions of the Symbolic Argument need not even provide a full account (sufficient reasons) for enfranchising everyone within a given domain. They may simply support the prohibition on denying the franchise for a particular group of citizens, on condition that others are justifiably enfranchised. This is what arms these versions against the Contingency Objection. It is perfectly coherent for the proponent of an equality-oriented version of the Symbolic Argument that on the one hand, the severely mentally disabled should have the right to vote for a contingent, historically determined reason, whereas on the other hand, there may be universal reasons for extending the franchise to other groups (again, assuming that some citizens have it already) that do not include the severely mentally disabled. In other words, equality-oriented versions of the Symbolic Argument may not aspire to provide a full-fledged justification of the universality of the franchise. Instead, they may provide only reasons to extend it to some groups, in addition to or instead of more general arguments for the universality of the franchise which do not rely on historical contingencies.

The limited justificatory ambitions of the equality-oriented versions of the Symbolic Argument also save these versions from the Insufficiency Objection. Like existence-oriented versions that are part of a complex account of the franchise, equality-oriented versions do not even have the ambition to provide the sufficient conditions of enfranchisement as such. So, while the Insufficiency Objection formally applies to these versions too, it has no teeth against them.

3.5. The Holistic-Particularistic Dimension

Some versions of the Symbolic Argument are holistic in the sense that they assume states' expressive obligations to apply to state action understood as a whole, but not necessarily to any (let alone every) single basic state action or policy which jointly constitute state action as a whole.[47] Particularistic versions, in contrast, apply the expressive obligation severally and individually to either some, or each and every one, of the (basic) state actions or policies that jointly constitute state action as a whole.

Negative versions of the Symbolic Argument cohere better with particularistic versions which apply the expressive obligation to each and every (basic) state act than with holistic versions. It is intuitively much more plausible that states should refrain not only overall, but also in each particular case, from expressing insulting messages—at least as a *pro tanto* requirement. If insulting is wrong, every single instance of insulting is wrong. Positive versions, however, seem to cohere less well with particularistic versions: it is implausible to assume that states should strive to positively express equal concern and respect with every particular, further non-reducible state act.[48]

Specific versions of the Symbolic Argument may also seem to cohere better than general versions do with particularistic versions that only apply to some state action. Specific versions justify why a specific field of state action or policy—in our case, when it comes to popular sovereignty-based versions, the distribution of the right to vote—should be the focus of symbolic expressive judgments, rather than state action seen as a whole. General versions of the Symbolic Argument do not supply such a straightforward normative reason for the particularity of the expressive obligation. If they assume that only some, but not all particular

[47] For the concept of "basic action", see Danto 1979.
[48] Positive versions may cohere relatively well with particularistic versions which apply the expressive obligation to *some*, as opposed to each and every state act.

state actions fall within the ambit of the state's expressive obligation, then general *and* particularistic versions may well appear incoherent at best, and logically inconsistent at worst.

However, in fact, general versions of the Symbolic Argument can also explain, in a different way, why some or all particular state actions should be the targets of states' expressive obligations. General versions, since they cannot provide specific *normative* reasons for this, can have recourse to *descriptive* considerations. For example, it may well be the case that given the particular historical background of a polity, disfranchisement (of at least a particular group of citizens) has a much stronger symbolic significance than other policies or state actions. This is not necessarily because there is anything normatively distinctively significant about voting rights, on a general version of the Symbolic Argument, but rather because there is something particularly insulting about not having the right to vote (while others do). If there is no particular normative reason for finding a state action or policy insulting, this does *not* mean that a particular state action or policy is insulting purely because some think it is. There may be good historical reasons for holding it insulting even if there is no normative consideration that counts against it *right now*—independently of expressive considerations, that is. If a state committed hideous injustice in some particular field of state action by introducing a particular policy in the past, then there may be good expressive reasons against introducing similar policies in the present *even if* these policies do not otherwise constitute injustice any more in the present circumstances, or for the reasons they would be enacted now. This is still consistent with assuming that the Symbolic Argument relies on a universal, independent moral consideration.

3.6. Assessing the Strength of the Strongest Version

The analysis of the different dimensions along which versions of the Symbolic Argument can be classified leave us with at least one particularly strong version of the argument, which is

negative, specific, equality-oriented and particularistic. I will refer to it as the Strong Symbolic Argument:

> (P1) There is an independent moral justification for enfranchising some individuals.
>
> (P2) Equal concern and respect for citizens requires popular sovereignty.
>
> (P3) Popular sovereignty requires states to *refrain* from expressing that anyone subject to their political authority is *not* a full member of the political community.
>
> (P4) Denying citizens with severe mental disabilities, *but not others*, the right to vote expresses that the affected citizens are *not* equal members of the political community, *if* there is an independent justification to grant others the right to vote.
>
> (C) Citizens with severe mental disabilities should also be granted the right to vote.

This version of the argument is particularly strong as it unites several of the advantages identified above, compared to possible alternative versions. It assumes only a negative expressive obligation—so it is a viable candidate for an argument which applies to ideal theory too. It specifically ties the expressive obligation to popular sovereignty—and thus avoids the Unnecessity Objection. It is meant to provide only a conditional argument for the equal enfranchisement of those living with severe mental disabilities, assuming an independent argument for enfranchisement—i.e., the existence of the right to vote—is available. Consequently, it avoids both the Insufficiency and the Contingency Objections. Finally, the particularistic focus of the expressive obligation—namely, that it applies not to state action in general, but to the distribution of voting rights in particular—gains relative plausibility given the specific, popular sovereignty-related normative basis of the justification offered. What can this strong version of the Symbolic Argument achieve?

First of all, the argument, if sound, leaves us with at least a *pro tanto* requirement to enfranchise members of the relevant group, a requirement which holds only *ceteris paribus*. The argument, unlike the one examined in Ch. 2, does provide a reason why competence-based disenfranchisement should be normatively suspect, and why it should require moral

justification. Second, the argument is also appealing because it may seem to offer a reason why it only supports the enfranchisement of those with severe mental disabilities, but not the enfranchisement of children. It may simply be a matter of historical fact that the severely mentally disabled have been subject to such injustices that children have not. Accordingly, for empirical reasons, the negative expressive potential of disenfranchisement is not the same as applied to these two groups even if their voting competence is assumed to be on a par: whereas disenfranchising children may not carry a message of unequal political membership, disenfranchising the severely mentally disabled may convey this particular form of insult.

Yet the *pro tanto* nature of the conclusion in itself already sets limits to what the Symbolic Argument can achieve. On the one hand, there may be normative considerations which provide stronger or overriding reasons in favor of disenfranchisement. Indeed, (P3) essentially prohibits a particular kind of unjustified discrimination—but as with all cases of discrimination, it would be extremely implausible to rule out the possibility that *justified* discrimination does exist in this particular domain too. So, all the argument achieves, if sound, is to make disenfranchisement justifiably suspect. Taken in itself, it cannot provide an *all things considered* prohibition on enfranchisement.

Considerations overriding the *pro tanto* conclusion of the Symbolic Argument may come from two kinds of sources. One: reasons independent from those justifying its conclusion may provide an external justification of competence-based restrictions. E.g., there may be independent reasons for the competent exercise of political authority which count against the enfranchisement of both children and the severely mentally disabled. Two: the Symbolic Argument does not exclude the possibility that there are internal justifications of competence-based restrictions. For instance, equal concern and respect for citizens in the exercise of political authority may require protecting the integrity of the electoral process by minimizing abuses of the electoral process, and such efforts may try to achieve this aim by reducing risks

of manipulation. Ultimately, risks of manipulation, in turn, may be reduced by excluding those from the electoral process who are either too easily manipulable, or who are assumed to be unable to form an independent individual electoral will. (Such arguments will be analyzed in detail in Chapter 4.) But this line of (a similarly *pro tanto*) argument supporting disenfranchisement rests on the *same justificatory basis* as the Symbolic Argument: equal concern and respect of citizens in the exercise of political authority. So, prioritization between the different, practically conflicting requirements of the selfsame justificatory principle is likely to be necessary too.

On the other hand, we have reasons to assume not only that there are normative considerations which support the disenfranchisement of the severely mentally disabled, but also that these considerations may be stronger than the pro-enfranchisement considerations of the Symbolic Argument. The reason for this is as follows. Normative considerations for or against a kind of policy may belong to one of the following four categories:

> (1) Symbolic: the policy expresses or fails to express a particular desirable, required or objectionable symbolic content
>
> (2) Consequential: the policy always or typically or very likely results in a particular, desirable, required or objectionable outcome
>
> (3) Constitutive: the policy realizes or fails to realize a particular (procedural) value
>
> (4) Justificatory: the policy is justified by the required or objectionable kind of reasons

As a general principle of prioritization, we can observe that out of the four kinds of reasons identified above, symbolic considerations seem to be the least weighty of all kinds in cases of conflict. Therefore, in cases of conflict *between reasons of different kinds*, it is extremely likely that the *pro tanto* conclusion of the Symbolic Argument is overridden by other kinds of considerations. Overriding may take the form of outweighing: symbolic considerations may be weighed up against other considerations of other kinds and lose out once the weights are

compared. But it is even more likely that in most cases, overriding takes place in a stronger fashion. Consequential, constitutive or justificatory considerations may take lexical priority over symbolic considerations. In such cases, if symbolic considerations conflict with other kinds of considerations, the former are not even weighed up: the latter take priority without any weighing. In conclusion, even the particularly strong version of the Symbolic Argument, if sound, proves to support a rather weak conclusion—not only because its conclusion is a *pro tanto* requirement. Rather, because we have good reasons to assume even without considering particular conflicting normative considerations that whatever the latter will be, at the end of the day, they are most likely to override the requirement the Symbolic Argument concludes to.

Of course, it is still logically possible that there are no considerations that count against the conclusion of the Symbolic Argument, or that other, conflicting considerations exist, but they are also symbolic in kind. In the latter case, considerations supporting competence-based restrictions on the franchise may be very easily outweighed by considerations supporting the Symbolic Argument. Yet let me foreshadow later chapters and state, without arguing for my claim at this point, that reasons for competence-based restrictions are *not* symbolic in kind.

3.7. Expressing Membership in the Political Community

So, far, I have assumed the Strong Symbolic Argument to be sound, and I only pointed out its limitations taking that assumption for granted. Now I would like to criticize the argument itself by calling into question its validity. You will recall that the Strong Symbolic Argument is specific in its justification. It assumes there is a specific prohibition on expressing unequal political status (P3).

The main question, of course, concerns the mechanism of expressing unequal political status. How does disenfranchisement exactly express it and why? Is it impossible to disable the

symbolic significance of disenfranchisement, and hence its symbolic potential is unconditional, or is there a way to pre-empt the symbolic effect of disenfranchisement? I will argue that it is at least possible that the latter is the case. If that is so, that does not show the conclusion of the Strong Symbolic Argument to be false. But it does show that in order to validly draw that conclusion, proponents of the Strong Symbolic Argument must prove a further assumption: namely, that nothing blocks the symbolic potential of disenfranchisement in the given cases.

Let us consider, first, how disenfranchisement may get its strong symbolic, expressive potential. This is not hard to see: by default, citizens are subject to the exercise of political authority, and disabling some from participating in the exercise of this authority carries the message, *by default*, that those disenfranchised are second-class citizens, in comparison to those who are allowed to participate in the joint exercise of political authority. The right to vote has become a strong symbol of equal political status. Absent special reasons, disenfranchisement expresses the denial of this status.

However, special reasons are not always absent. An analogy from the philosophy of language is helpful here. Linguistic expressions may have implicated meaning which goes beyond their truth-conditional meaning: what is expressed may be more that what is said. Grice (1989) helpfully distinguishes between two ways in which non-truth-conditional meaning can be generated: conversational and conventional implicatures (p. 25). Conversational implicatures are cancellable, which means that the pragmatic meaning generated by a given utterance can be disabled while using the same utterance. For example, in a recommendation letter, a professor may characterize her student as follows: "He has a very clear handwriting", which in itself conversationally implicates that he hardly has any academic virtues. But the professor may cancel this pragmatic meaning, e.g., by adding: "I take this to testify to his orderly, balanced personality: a rare treasure in a pool of similarly talented, but much more frustrated

graduate students who can't organize their work." By contrast, conventional implicatures inevitably express their non-truth-conditional meaning: they are non-cancellable. For example, "Even Donald Trump would not support this policy" conventionally implicates that the policy in question is extremely radically right-wing, and Donald Trump would be the most likely to support it. It is simply malformed to add, "but Donald Trump is unlikely anyways to support radical right-wing policies such as this one." In conventional implicatures, the non-truth-conditional content cannot be disabled.

Let us apply the analogy from the philosophy of language to the symbolic potential of policies. Policies or state action can also express meaning which goes beyond the semantic meaning of the law enacting them. To take the case in point, disenfranchising someone at least typically expresses that they are second-class members of the political community. But this is not, of course, what the relevant law says. The symbolic content is non-truth-conditionally expressed. Then the relevant question is this: Is the symbolic, non-truth-condition meaning of disenfranchisement cancellable or non-cancellable? Does it make sense to say, "You are disenfranchised, *but that does not mean* that we think of you as a second-class member of our political community"?

Historical examples are misleading, in this respect. Examples abound in which it is asserted, without any good reason, that the symbolic significance of disenfranchisement is cancelled. Symbolic meaning does not get canceled by mere say-so. Consider the following example: the US Supreme Court declared, infamously, in 1875 that women—who did not have the franchise back then—were just as much citizens as men nonetheless.[49] However, no matter how ridiculous and insulting the assertion, it goes no way to show that the symbolic significance of disenfranchisement is, as a matter of general fact, non-cancellable. Women's disenfranchisement will not ever stop sounding insulting simply because there are

[49] See *Minor* v. *Happersett*, 88 U.S. 162 (1875).

overwhelming reasons for enfranchising women that have nothing to do with the symbolic significance of enfranchisement. And since there is no good reason against the enfranchisement of women, while there are plenty of extremely good (non-symbolic) reasons in its favor, the sheer *arbitrariness* of disenfranchisement continues to lend symbolic significance to disenfranchisement. As long as weighty reasons need to be ignored, and nothing less than completely arbitrary considerations need to be presented, to argue for women's disenfranchisement, the concurrent symbolic expression of unequal political status is inevitable.

What sets women's disenfranchisement apart from disenfranchising the severely mentally disabled is that the latter policy is arguably not arbitrary. In fact, at least two different kinds of attempts have been made so far to make it non-arbitrary. On the one hand, in Chapter 2, I made sure to offer reasons for competence-based restrictions that, following Christiano, are *public reasons*. In fact, Christiano (2008, p. 128) himself makes a strong point of offering a public justification of competence-based restrictions when it comes to *Non-Scalar Disenfranchisement*, while emphasizing the unavailability of such reasons to justify *Non-Scalar Enfranchisement.* The main point is that some kinds of reasons—namely, those which are consistent with the equal consideration of all citizens' interests—may justify discriminative treatment in ways in which other kinds of reasons cannot. Now, I take it that the internal justification of competence-based disenfranchisement offered in Chapter 2 is based on reasons which satisfy this desideratum. If that is so, however, then the burden of proof falls on proponents of the Strong Symbolic Argument to show why the public kind of justification offered for disenfranchisement does *not* cancel the symbolic content of the policy—even though the very reasons offered for disenfranchisement never questioned for a moment the equal status of disenfranchised citizens.

On the other hand, proponents of the Symbolic Argument may argue that offering the right *kind* of reasons for disenfranchisement is not sufficient to cancel its symbolic significance. Substantive measures with a positive symbolic content may be further necessary conditions of cancelling the negative symbolic significance of disenfranchisement. For instance, it is possible that only the establishment of a special ombudsperson for the rights of persons living with severe mental disabilities can convey the message that said persons are worth just as much as anyone else as members of the political community. Compensatory, positive measures must be credible, of course—a necessary condition of which seems to be that there must exist independent reasons for the disenfranchisement. Providing each and every female citizen with a rose and a flag to express their equal status in the political community, instead of the right to vote, would be a spectacularly failed attempt. So would be the attempt to counteract the symbolic significance of their disenfranchisement by establishing a special women's rights commissioner mandate. But that is because there are no good independent, non-symbolic reasons at all against women's enfranchisement, and hence no credible attempt can be made for their disenfranchisement. The same, however, has not been shown to be true concerning citizens living with severe mental disabilities.

At this point, then, it is unclear why the symbolic significance of disenfranchisement may not be cancelled if both the right kind of reasons are offered to justify it, and positive measures are introduced to counteract any negative symbolic message—when the latter is possible at all. This is not merely to claim that there may be weightier reasons, or reasons which enjoy relative priority to symbolic considerations, that override symbolic considerations once all relevant reasons are taken into consideration. (See the previous section for that claim.) Instead, the conclusion here is that the very symbolic consideration that weighs in against disenfranchisement may itself be undercut: in fact, *pro tanto* reasons revert back to merely *prima facie* ones, to use Letsas' terminology (see the previous Chapter for elaboration on the

distinction). Or at least we need to know much more about why the negative symbolic significance of disenfranchisement could not be cancelled if both the right kind of reasons are used to justify disenfranchisement, and substantive positive measures are taken to convey a—credible—message that the disenfranchised are equal members of the political community.

3.8. Conclusion

In this chapter, I have made three contributions to the literature on the symbolic significance of (dis)enfranchisement, and on its relevance to competence-based restrictions of the franchise. First, I have distinguished several versions of the Symbolic Argument—the argument which establishes a prohibition on competence-based restrictions that carry negative symbolic significance. I characterized different versions of the argument along four dimensions, and comprehensively assessed the merits and demerits of the different versions of the Argument along these dimensions. This typological work allows to more precisely formulate versions of the Symbolic Argument, and arms both their proponents and their critics with a fairly general toolkit of assessment which helps identify the strongest versions of the argument.

Second, I have argued that even what I regard as the strongest version of the Symbolic Argument can only establish a *pro tanto* prohibition on disenfranchisement. Further, I have shown that we have good reasons to assume that as long as we have any other non-symbolic considerations in favor of competence-based disenfranchisement, it is extremely unlikely that symbolic considerations would prevail. This, in turn, helps to explain both the intuition that disenfranchisement, even where it has an internal justification, might nonetheless result in a normatively relevant loss—and also the intuition that the previous intuition is rather weak or controversial.

Third, I have established the invalidity of the Symbolic Argument by deploying an analytic framework used in the philosophy of language to analyze the generation of pragmatic meaning. In particular, I have shown that we have good reasons to assume not only that the symbolic significance of disenfranchisement can be outweighed or overridden by different considerations if disenfranchisement is overall justified, but also that even the *pro tanto* symbolic reason against disenfranchisement can be neutralized. Thus, I have hopefully shifted the burden of proof to the proponent of the Symbolic Argument to show that the symbolic expressive content of disenfranchising policies in either always non-cancellable, or it is non-cancellable for some particular reason when it comes to the disenfranchisement of people living with severe mental disabilities.

It is worth emphasizing again that my arguments in this chapter are not fatal for the view that disenfranchising adults living with severe mental disabilities is unjustified. Instead, my argument suggests that non-symbolic justifications for that view are much stronger, and much more work needs to be done on the symbolically driven justification too. Moreover, despite the foregoing, the Symbolic Argument may also contribute to explaining the difference between our intuitions concerning the disenfranchisement of children, on the one hand, and the disenfranchisement of adults living with severe mental disabilities, on the other. Intuitively, the previous disenfranchisement is much less controversial—and this may, among other reasons, be due to the fact that symbolic considerations weigh in much more heavily in the latter cases.

4. Independence of Judgment

4.0. Introduction

Are all voters able to make a relevantly *independent* contribution to the electoral process when they cast their votes? If not, does that pose a threat to the equal political status of voters vis-à-vis one another? Or does that call into question popular control over legislation? If the answer to either question is positive, should the franchise of insufficiently independent voters be restricted? A considerable part of the legal and public debate on the justifiability of competence-based restrictions on the franchise focuses on these issues. Yet it is impossible to answer these questions without clarifying what is meant by 'independent' contribution, why it matters morally speaking, and whether restrictions on the franchise are the right way to address the relevant moral concerns. This chapter aims to provide this much-needed clarification.

First, this chapter contributes to debates on substantive competence-based restrictions on the franchise by reconstructing and criticizing two moral arguments concerning electoral exclusion, both based on a concern with voters' independent judgment. One of them, the Manipulation Argument, is ultimately concerned to protect horizontal political equality, i.e., equal voting power as between citizens *qua* voters—a requirement of popular sovereignty—from undue electoral influence. This argument identifies the lack of independence in moral judgment as a source of an excessive risk to horizontal political equality. Thus, it argues for a *pro tanto* requirement to exclude those who cannot exercise independent judgment as voters, in order to protect horizontal equality. It is not concerned with *outcomes*, but only with the equal political status of all voters in the electoral process. Nor is the argument meant to protect unduly influenced voters themselves—but rather voters who are themselves not manipulated but suffer a relative loss of voting power as a result of others unduly gaining

voting power by manipulation. I conclude that the Manipulation Argument for a *pro tanto* requirement is sound—but we need to know what independence of judgment exactly requires.

The other argument I reconstruct and criticize is the Argument from Political Responsibility. It is ultimately concerned with another requirement of popular sovereignty: vertical political equality—i.e., equal political status as between citizens and representatives. It argues that voters who cannot vote based on their independent judgment, but defer to candidates or representatives in the relevant judgments, are detrimental to the popular control of legislation. The argument is also meant to support a *pro tanto* requirement to exclude those who cannot make independent voting-relevant judgments, and hence are at an excessive risk of undermining the popular control of representatives. This argument draws on the recent work of Eric Beerbohm—yet uses it in a novel way. Beerbohm is interested in the ethics of voting, and moral responsibility attribution for state actions and omissions. In contrast, I am applying the problem of voters' independent judgment and control over representatives to popular sovereignty and the political philosophy of voting rights. However, I conclude that the Argument from Political Responsibility can only establish a *pro tanto* requirement of excluding those who are too likely to defer to politicians *if* the number of such voters is excessive, since ensuring popular control over legislation is the collective responsibility of voters, and not the individual responsibility of each voter. Further, I argue that it is a regular, necessary feature of representative democracies that voters cannot influence the moral agenda of political decision-making directly anyway. So, in liberal democracies, voters cannot but defer to the moral judgment of representatives in lots of cases.

Second, after the reconstruction and substantive moral evaluation of the two arguments, I make a considerable detour into moral epistemology in order to see what independence in moral judgment—the judgment relevant to voters' choice—requires and permits in terms of deference and testimony. I compare two approaches to independence in moral judgment: a

more radical and a more minimalistic approach. I argue at length that the minimalistic approach should be preferred. Further, I also show that the Manipulation Argument and the Argument from Political Responsibility provide no special reasons against interpreting the requirement of independence in voters' moral judgment according to the minimalist approach, as the requirement applies to particular situations these arguments are concerned with. While there is a growing literature on the requirements of moral autonomy, this literature has unfortunately been entirely ignored in debates on the competence-based restrictions of the franchise. Thus the second major contribution of this chapter is to make use of the findings of the former in order to cash out assumptions in the latter.

The substantive upshot of the longish detour into moral epistemology is the following. Both the Manipulation Argument and the Argument from Political Responsibility can only require independence in the sense that *un*justified deference be avoided. Yet voters are sufficiently independent—and should not be considered as manipulated—even if they defer, justifiably, to someone even on fundamental moral matters. So, I settle for a fairly social conception of voting(-related moral) competence. Once we give up on a stronger competence requirement on collecting and processing all or some morally relevant information on our own to make moral judgments for political purposes, we fall back on a weaker competence requirement that concerns the competent outsourcing of moral judgment for the purposes of voting. Accordingly, if someone is unable to make moral judgments, but is able to justifiably defer to others, the arguments examined here do not provide any reasons for excluding them from the electorate.

4.1. The Manipulation Argument

One popular assumption that lends support to the electoral exclusion of children and mentally disabled citizens is that they are more susceptible to manipulation or some other sort of undue

influence on the electoral decisions they make than other voters. As López-Guerra puts it, "it could be suggested that members of these groups would systematically react to extraneous or dangerous electoral offers, such as candy subsidies or less school" (López-Guerra 2014, p. 67; for similar ideas, see also, e.g., Virginia Voter Alliance 2015, Leonard 2012). The argument follows this scheme, and I will refer to it as the Manipulation Argument:

> (P1) Those who do not have sufficient independence of judgment are exposed to an excessive risk of manipulation.
>
> (P2) Those who are exposed to an excessive risk of manipulation, and whose manipulation cannot be avoided in less restrictive ways, should not be allowed to vote.
>
> (P3) Children and mentally disabled people do not have a sufficient independence of judgment—and their manipulation cannot be avoided in less restrictive ways.
>
> (C) They should not be allowed to vote.

Note that "manipulation" stands in the argument for any form of non-rational persuasion.[50] What could justify (P2)? What morals reasons are there to avoid manipulation at the expense of disenfranchisement? There are at least two different approaches to take. On the one hand, we might be worried that an electoral decision formed on the basis of manipulation just does not serve the right kind of interests the franchise is supposed to serve. I set aside this concern here, as it reduces to a version of the Pointlessness Argument that I discussed at length in Chapter 2. On the other hand, manipulation may be worrisome as it *distorts* the formation of the popular will in the electoral procedure in a specific way. To put it metaphorically, unavoidable manipulation represents a risk that the electoral decisions of those who can easily manipulate others may be reflected as if magnified in the aggregate results. On this approach, the problem with manipulated votes is not that they convey a malformed electoral will, or that they contribute to harmful electoral outcomes, but rather that they convey *someone else's*

[50] This is roughly in line with the account of manipulation Daniel Scoccia (2015) gives, as well as with what Faden, Beauchamp and King (1986) call psychological manipulation (pp. 354–368). See also Barnhill (2014), p. 62.

electoral will. This kind of distortion in the formation of popular will may be problematic for instrumental or non-instrumental reasons too. As I do not think instrumental reasons are very good to justify exclusion at the level of the individual voter, I set aside outcome-driven worries in this chapter at all. Instead, I focus on non-instrumental reasons from the ideal of political equality.

The risk of manipulated votes, I argue, raises a concern with *horizontal political equality*: voters' exercise of political authority as equals (Dworkin 2000, pp. 190–191). How so? If you vote for a party or a candidate because someone has manipulated you into believing that they offer the most just policies, or that they are the most capable candidates to act on their program, then another voter is having her way not only by casting her own vote, but also by having you cast your vote in a certain way (López-Guerra [2014, p. 76] refers to this as the problem of "electoral integrity"). Metaphorically speaking, she double her electoral will by using yours (too) as a mere vehicle of hers. Of course, if someone rationally persuades you to vote n a specific way, something apparently similar happens. But rational persuasion is no violation of political equality because it is assumed that *you* form your own electoral will based on the reasons you hear from others, rather than them shaping it directly (see Dworkin 2000, pp. 197ff). Whatever choice you make as a voter, as long as you make up your mind as a result of rational persuasion, your choice reflects, properly speaking, *your* judgment. Rational persuasion, as opposed to manipulation, does not undermine your agency as a voter.

But why does horizontal political equality oppose manipulation as described above? And how does exclusion of the targets of manipulation from the electorate help restore political equality? On the one hand, the manipulated person—if she gets manipulated and can cast a vote—will effectuate someone else's electoral will. On the other hand, if she is excluded from the electorate, she won't get to effectuate her own electoral will either. So, what ends, if any, does exclusion serve? The violation whose victim is the target of manipulation is not

mitigated by disenfranchising her. And as I said, I will not consider outcome-based arguments—though the outcome of an election *may* be influenced by the presence or absence of a large number of manipulated votes.

The real victim of the violation of political equality is not the manipulated person, however, but all third persons—all other voters. Assume a tiny political community of three voters (A, B, C), where all voters are assigned equal voting power. Imagine that Voter A manipulates Voter B, and Voter C neither gets manipulated nor manipulates anyone else. Then Voter A will have double the political impact as Voter C does: in effect, she determines two electoral wills (A's and B's as well), whereas Voter C determines only one (her own). So, it is in fact Voter C's equal vote that is threatened. This is objectionable because liberal democracies have at least a *pro tanto* duty to actively protect everyone's political equality. Obviously, as the size of the electorate increases, and manipulation remains a marginal phenomenon, the resulting ratio of voting power between manipulators and third persons is no longer 2:1, but reduces to less astounding figures. So, in huge democracies, third persons are less disadvantaged in the effectiveness with which they can influence (or impact) political outcomes. But that goes no way to alleviate the concern here, which has nothing to do with influencing outcomes, but only with unequal status. Equal voting power obviously does not provide everyone with an equal chance to influence outcomes anyways—chances depend on everyone's votes too. Still, political equality entails a requirement to protect the *ex ante* equal impact of the votes, unless there are good reasons to subvert this equality, as a matter of the equal political status of voters. So, equal voting power is constitutive of political equality irrespective of the actual opportunity for influence it affords voters. That is why manipulation threatens horizontal political equality, and why political equality, supports a *pro tanto* case to avoid the excessive risk of manipulating voters' wills. It takes a further step from here, of course, to conclude that avoidance should be achieved by electoral exclusion. But at least it is clear, by now, that the

threat to the political equality of third person voters is, in fact, removed by excluding those at excessive risk of manipulation from the electorate.

Knowing one reason why we should protect the electoral process against an excessive risk of manipulation, it would be great to know what counts as "excessive". (P1) defines exposure to excessive risk as a lack of sufficiently independent judgment. Yet this is hardly informative: we still need to cash out the criterion of sufficiency. And here we face the following problem. *Everyone* seems to be susceptible to some degree of manipulation: all of us are affected by non-rational persuasion. Who should be deemed to be at an excessive risk, whose judgment is not *sufficiently* independent?

There is at least one group of citizens who can be readily identified as possessing insufficiently independent judgment: namely, those who do not have any judgment at all. (P3) identifies children and the mentally disabled as having insufficiently independent judgment for this reason.[51] In clear-cut, extreme—and arguably extremely rare—cases, we are not talking, in principle at least, about a deficient or not fully functional capacity, but about the lack of a capacity. As I said, such cases must be very infrequent, but they certainly represent a logical possibility. Hence the *pro tanto* requirement to exclude small children and severely mentally disabled adults in order to avoid manipulation.

In order of decreasing risk, the next group to consider is that of citizens who can be rationally persuaded (possess the relevant capacities), but are unlikely to use them: they are not trained to use them, or although they are, they are even more likely to succumb to non-rational

[51] You could argue that it is very difficult to acquire any direct empirical evidence that would support or refute the claim that children and those living with severe mental disabilities do not have any capacity to make, e.g., moral judgments. After all, children and people with mental disabilities have been excluded from the franchise for the major part of the history of liberal democracy. Without lifting the restrictions and seeing how children and the mentally disabled vote, López-Guerra (2014, p. 68) argues, we lack adequate empirical evidence for something akin to (P3). But this misses the point: that very young children and those whose mental disabilities do not allow them to engage in rational reasoning at all have insufficient independence of judgment is not so much of an empirical question, but rather a conceptual one.

persuasion. We can think of somewhat older children and people living with milder cognitive or emotional disabilities—but this group includes statistically normal adults too, possibly in large numbers. Or think about families where the husband guilt-trips the wife to vote the right way: even despite the secrecy of the vote, this is a familiar phenomenon. Assume that in such cases, there is indeed a higher likelihood that the voters in question give in to manipulation, so the risk is intuitively just as excessive as in the previously considered group. The only difference is that it is not the capacity for rational persuasion that is lacking in this case, but the disposition to use it, or to act upon its deliberative outcomes, is masked by a disposition to act in non-rational ways.

Yet in the latter cases, it is unclear that the best way to reduce risk is to restrict the franchise of those who are likely to be manipulated. Why not prevent manipulation instead? Manipulation targeting children seems more difficult to avoid, whereas there are plenty of ways, at least in ideal theory, to avoid the kind of political abuse that occurs between spouses. So, whereas disenfranchisement may be a last resort, it may be used because there are no alternative ways to adequately—efficiently and morally permissibly—reduce the risk of manipulation targeting children, but plenty of alternatives to adequately reduce the risk of manipulation targeting adults.

Still, at least in principle, the Manipulation Argument may seem to provide a slippery slope downward in the direction of universal disenfranchisement. Everyone is exposed to some risk of manipulation, and so far we do not know what risk counts as excessive. You may, in fact, take the slippery slope nature of the argument as a *reductio*: it surely cannot be sound if it concludes to the exclusion of nearly everyone from the electorate, at least *pro tanto*. But the Manipulation Argument seems to land us on a slippery slope only because I have said nothing so far about how we should specify "sufficient" independence of judgment.

My method above was extremely blunt: where you assume there is none of something that we need some of, it surely can't be enough, no matter how much exactly we need. If we assume that children and the severely mentally disabled have no capacity to judge on matters relevant to voting, they are absolutely certainly exposed to an excessive risk of manipulation. They cannot be rationally persuaded, the assumption goes, but *only* manipulated. Yet the Manipulation Argument can be applied more precisely—and with much more inclusive results, I will argue below—once we settle the normative role of independent judgment in the distribution of voting rights, and then specify a level of independence which is sufficient to fulfill that normative role. I will soon turn to this exercise, but before that, I wish to put forth another *pro tanto* argument for exclusion in which the sufficient independence of voters' judgment—whatever it consists in more precisely—plays a significant role.

4.2. The Argument from Political Responsibility

The other argument for electoral exclusion in which the independence of judgment figures centrally concerns the role of voters in representative democracies. This role, Christiano (1996, pp. 166ff) and Beerbohm (2013, pp. 166–192) argue, is defined by an epistemic division of labor between representatives and voters. Voters may not be expected to make decisions on what exact policies are the best (most efficient) way to realize a specific moral agenda—they should be allowed to defer in that regard to representatives. In Dworkin's terminology, the policy aspect of democratic decision-making, and all the epistemic work needed to ensure its adequate quality, is assigned to representatives. In contrast, citizens' epistemic responsibility concerns the moral principle aspect of decision-making: citizens are required to form, revise and pursue by their votes epistemically justified convictions about the right moral principles that should underlie just policy-making. In other words, as a voter, you are not morally required to consider the policy aspects of a candidate's or party's program: you can make a valuable contribution to the electoral decisions without giving any thought to

it. Yet the same is not true about the moral aspect of these programs: you as a voter are required to reflect on the moral adequacy of the proposed programs, and you are not permitted to defer to politicians in this regard. As Beerbohm (ibid.) puts it,

> There is something worrisome about this kind of deference on moral questions […]. It is not obvious that we are justified in substituting the moral judgments of political agents, in virtue of their institutional positions, for our own judgment. Political life seems to resist extreme informational asymmetries. (pp. 168–169)

The epistemic independence of voters hence becomes an aspect of the agency problem (Beerbohm 2013, p. 169). Although Beerbohm is silent on the specifically political normative concern which underlies the agency problem, Christiano (1996, pp. 169ff) gives us more guidance in this respect: the idea seems to be that citizens *exercise sufficient control over representatives if and only if citizens cast their votes after a moral evaluation of the parties' and candidates' programs*. "Contracting out" moral decision-making, to use Beerbohm's words, is impermissible as it undermines citizens' control over legislation.

While Beerbohm's (2013) work concerns, mostly, the conditions of moral responsibility voters can take for actions and omissions of their states, a theory of the division of labor between voters and representatives is not only relevant for an ethical theory of voting behavior and for attributions of collective responsibility. It is also hugely relevant for the political philosophy of voting rights. The theory of the proper division of labor between voters and representatives is an integral part of a theory of popular sovereignty. So, it is legitimate to ask whether or not providing those citizens who cannot fulfill their respective tasks in this division of labor with the right to vote threatens popular sovereignty.

Let me elaborate on the potential threat here to popular sovereignty. Popular sovereignty entails not only political equality between voters ("horizontal political equality"), but also political equality between representatives and 'mere' citizens who do not hold a political office

("vertical political equality": Dworkin 2000, pp. 190–191; see also Kis 2013, pp. 101–102). These two aspects of political equality cannot have identical requirements in representatives democracies (see Dworkin 2000, p. 192). Yet popular sovereignty does require that voters and representatives exercise political power as equals, in some sense. We need not cash out all the positive requirements—for our purposes, it is sufficient to point out a negative requirement based on the above: popular sovereignty requires that citizens, as opposed to representatives, take control of the moral aspect of political decision-making. This is a vague requirement leaving room for multiple interpretations.[52] We need not settle the exact content of this requirement, however, to get the Argument from Political Responsibility off the ground:

> (P1) Popular sovereignty requires that citizens can control the moral content of political decision-making.
>
> (P2) Citizens can control the moral content of political decision-making only if they do not defer the moral content of political decision-making to their representatives.
>
> (C1) Citizens are required not to defer the moral content of political decision-making to their representatives.
>
> (P4) Citizens who cannot but defer the moral content of political decision-making to their representatives cannot vote according to what popular sovereignty requires.
>
> (P5) Those who cannot vote according to what popular sovereignty require should not be allowed to vote.
>
> (C) Citizens who cannot but defer the moral content of political decision-making to their representatives should not be allowed to vote.

Note the contrast with the Manipulation Argument. The latter one focuses on the concern with horizontal political equality: those who cannot or are unlikely to make an independent judgment considering the right reasons to vote may be vehicles of other voters' judgments. The Argument from Political Responsibility, on the other hand, focuses on the concern with

[52] Christiano (1996), for one, interprets it as requiring partially bound mandates: representatives, he thinks, should be bound by the moral aims they advertised in their programs (pp. 169ff). My view, in contrast, is that we have good reasons to insist on the free mandates of representatives even as far as their program principles go (see Mráz 2015)—but we have to make sure that voters have an effective opportunity to contribute to political decision-making by casting a vote which reflects their moral evaluation of the candidates' or parties' programs.

vertical political equality. It formulates the worry that representatives may legislate without adequate popular control if the electorate is such that it cannot but leave the moral agenda of democratic decision-making to the representatives.

However, in contrast to the Manipulation Argument, I will argue that the Argument from Political Responsibility provides only a conditional *pro tanto* case in favor of competence-based restrictions on the franchise. I will show that some of the premises are ambiguous, and once the ambiguity is dissolved, the validity of the argument is cast into doubt.

Consider (P2) and (P4): how are we to understand citizens' control over representatives? There are at least two alternatives: an individualistic and a collectivistic understanding. On the individualistic understanding, each and every one of us, voters, personally control the moral content of political decision-making by casting a vote based on our respective, independent judgments. But this sounds implausible. There just seems no way that any particular voter can, in any meaningful sense, exercise control over the moral content of political decision-making by casting a vote based on their independent judgments. The individualistic understanding is a non-starter.

On the alternative, collectivistic understanding (see, e.g., János Kis' [2013; 2009, p. 587] account of popular sovereign), the electorate collectively controls the moral content of political decision-making. Elections orient representatives at least in the weak sense that if representatives have a program (which they should), then voters can be expected to hold them accountable at the next elections by voting for them again or dismissing them (cf. Kis 2009). This is more plausible than the individualistic reading of (P2) and (P4). But now, once it has become clear that the electorate as a *collective* should not defer to the moral judgments of the representatives, it is far less clear how we get from here to the claim that individual voters who cannot contribute to this collective control should not be allowed to vote. Once we settle

for the collectivistic reading of (P2), reverting to the individualistic reading of (P4) becomes dubious. What does popular sovereignty require from the individual voter, if anything, to ensure vertical political equality? Yet if we insist on the collectivistic reading of both (P2) and (P4), not much follows from the argument concerning the franchise of individual voters.

It is also worth dwelling on (P5) for a moment. Remember: the argument assumes that vertical political equality requires voters' (collective) control over the representatives. How does it help this control if those who do cannot contribute to it are excluded from the electorate? You may object: they cannot contribute to this collective control either way, whether they are enfranchised or not. What use is there in excluding them? Perhaps a weak *pro tanto* permission to exclude them can be argued this way, in the form of an internal justification for competence-based restriction. But no requirement for exclusion follows—so the objection goes.

However, the objection ignores the collective nature of the control over representatives that popular sovereignty requires. The individual voters who cannot contribute to the collective control over the moral agenda of representatives truly cannot make better contributions if they are excluded from the electorate, since they cannot make any. But the idea is that if they impermissibly defer to representatives—e.g., they are non-rationally persuaded by party programs—then they *distort* or *worsen* the collective control that voters exercise over representatives. In fact, voters who impermissibly defer to representatives are simply vehicles of the agenda of the latter group. Similarly to 'horizontal' voter manipulation, voters without sufficient independence of judgment can be abused by representatives, thereby flouting political equality between citizens and representatives.

Vertical political equality, since it is collectivistic, is probably not as demanding in this regard as horizontal, individualistic political equality. Anything that threatens the latter directly

threatens citizens' status as political equals, and for that reason, it is *pro tanto* objectionable. But it is very counterintuitive to assume that each and every individual voters that cannot but defer to representatives violates vertical political equality. It also crucially depends the voting system and other institutional contingencies how detrimental a particular individual's deference could be. Therefore, it is more plausible to say that deference to representatives and candidates becomes problematic once the number of voters reaches a certain threshold. Then collective control of representatives becomes inefficient—and that is the point where vertical political equality is violated. I believe this is enough, at least to ground a *pro tanto* requirement to exclude small children from the electorate, except in extremely aging societies. Small children cannot but defer to others in matters of moral principle. And they are present in the population in masses. If they defer to candidates or representatives in matters of moral principle, that probably represents a threat to voters' control over the moral agenda of representatives.[53]

You may argue, finally, that the Manipulation Argument, while it primarily concerns a threat to horizontal political equality, also feed into an indirect concern with vertical political equality, similarly to the Argument from Political Responsibility. The Argument from Political Responsibility concerns a loss of control over representatives *to representatives themselves*. But if horizontal deference or manipulation becomes a routine, that results in *too few voters* controlling representatives. So, control over representatives may become less tight. However, I am not so sure this really is a problem of vertical equality. Compare this problem

[53] It is an important question whether the argument, once it is applied to children in a society, could avoid application to people living with severe mental disabilities. The latter are almost always a considerably smaller group of people. So, they as a collective cannot undermine control over representatives as much as children can. This, it may seem, *pro tanto* counts for excluding children, but not those living with severe mental disabilities, from the electorate, based on the Argument from Political Responsibility. However, it is not clear at all that strictly relying on this argument, we can make a distinction between the two groups. If we assume that neither can show sufficient independence of moral judgment, then it would appear to be immaterial how numerous one group is as opposed to the other. *All* of them exhibit the relevant property that threatens vertical political equality, so there must be some further reason why we should not exclude all of those who cannot make independent moral judgments.

to concerns with low turn-out: does it threaten vertical political equality that only a small proportion of all eligible voters cast their vote, and other voters simply suffer the results? I would not think so. Similarly, if some voters do go to the polls, but defer to a fellow voter's choice, this does not worsen collective control in the same way as deferring to candidates or representatives themselves.

Now, we have two arguments: the Manipulation Argument and the Argument from Political Responsibility which both rely on the notion of the voter who can make sufficiently independent moral judgments. But what counts as a sufficiently independently made moral judgment? In the next section, I hope to present a more precise and somewhat revisionist, permissive answer to this question.

4.3. What Is Independence of Moral Judgment?

4.3.1. Two Approaches: Radical vs. Minimalistic Independence

So far, I have not defined what independence of judgment consists in. I have merely relied on the assumption that the capacity to make independent judgments may or may not be present, and even if it is, it may be reliably not used, or unreliably used. Yet the arguments above have more teeth once we clarify what the relevant capacity consists in. There are, roughly, two different approaches to what makes your moral judgment independent.[54]

The first approach, which I shall call the Radical Independence approach, requires you to personally achieve a reflective equilibrium on a given range of moral questions. Your moral judgment is independent, on this view, insofar as you form, retain and revise your moral judgments solely on the basis of primary moral reasons which (purportedly) justify (count in

[54] Julia Driver (2006) makes a distinction between making and accepting a judgment—I will use the term "making" to include both: "making a moral judgment plausibly requires grasping the justificatory reasons oneself; accepting does not" (p. 638). I take this liberty as I do not think that the content of the requirement of independence can be settled conceptually—yet, in a sense, the two approaches presented here rely on a distinction between these two. Still, using the term "making" to cover both will not result in any unclarity.

favor of or against) your judgment. What the Radical Independence approach excludes is a particular use of (expert) testimony in forming your moral judgments.

Of course, the complete exclusion of testimony would have disastrous consequences: as it would radically delimit the domain of our moral knowledge or justified moral beliefs. The requirement of independent judgment certainly does condemn us to solipsism in political morality. It is implausible to require citizens to neither engage in deliberation with other citizens, nor rely on evidence relevant to political decisions that is supplied by fellow citizens or experts, in making an informed decision on what and whom to vote for. Citizens have a life to lead beyond their political life too (Christiano 1996, pp. 105–106). Excluding testimonial evidence would immensely increase the cost of collecting information. It would require expertise, time and material resources that few citizens can be expected to have while pursuing non-political projects.

Fortunately, Radical Independence does not require solipsism in judgment in the above senses. Instead, it permits two kinds of testimony. First, it permits testimony regarding the truth of descriptive propositions. Moral judgments require both moral (normative) and descriptive knowledge: they are applications of moral principles to a set of facts. Now, the independence of moral judgment is not threatened, even on this account, if it relies on testimonial evidence on the descriptive questions relevant to the judgment. For example, you may make an independent judgment concerning the legitimacy of political authority in Spain based on testimonial knowledge about the relevant non-normative facts: Is Spain a monarchy? (It is.) Does it have a constitution? (It does.) Does the monarch have more than a ceremonial role as a head of state? (Not really, it seems.) Does the constitution require and allow for fair and free elections organized reasonably frequently? (Yes.) You are permitted to rely on testimonial evidence in these questions as long as the justificatory conditions of testimonial evidence are met—mostly that the testifier tracks the truth more reliably than you do in these

questions, and / or she does so sufficiently reliably, and you have good grounds to assume that she indeed has these epistemic credentials (cf. Coady 1992).

Second, on the Radical Independence approach, you are also permitted to rely on a different kind of testimony that I will refer to as *guidance*. Guidance is something akin to testimony regarding the epistemic adequacy of the connections you make between moral principle you believe in, on the one hand, and evidence you have or other moral principles that you consider believing. (It is not exactly merely a form of testimony, as I will explain below.) For instance, a philosopher may help you realize that a valid logical inference should lead you to adopt some moral principle once you have adopted another (set) of moral principles. Or a professional ethicist—well-versed in medical ethics or the ethics of, say, legal practice—may show you "how certain kinds of evaluative systems apply to complex empirical and institutional situations" (Beerbohm 2013, p. 170), leading you to link descriptive beliefs and your moral principle, and to draw the conclusions. Further, you might hold that some moral principles follow, in a loser sense than logical inference, from more abstract principles or ideals by interpretation (cf. Dworkin 2011, pp 123ff). Someone better-versed at the relevant standards of interpretation and their application may guide you to a judgment showing that further moral principles or judgments follow from the ideals or principles you already endorse, rightly interpreted, even without considering any further descriptive (non-moral) facts.

Guidance is unproblematic even on the Radical Independence approach because, if successful, it allows you to appreciate the primary reasons which justify the moral judgment that you make.[55] Unlike the core cases of testimonial knowledge, its aim is not merely to deliver you a justified belief, but also to allow you to integrate the resulting justified belief into your very

[55] Hills 2009 refers to it as " advice", as opposed to "testimony": you subject what you have been advised to "critical scrutiny and you decide whether or not to accept [it] on its own merits. You take into account what others said to you as a guide to your own reflections" (pp. 122–123).

own belief system (cf. McGrath 2009, p. 322). Hence it does not save you *all* the costs of belief acquisition, retention and revision based on primary justificatory reasons—although it still allows for some division of epistemic labor in making moral judgments.

Further, crucially, the practice of guidance assumes that you have a capacity to appreciate (respond to) the primary reasons that justify your "guided" beliefs. If someone points out that you believe that *p*, and also that "if *p*, then *q*", *and* also points out that you therefore have reason to believe *q*, but you are unable to draw the inference, you won't have a guided belief. You may have an oddly formed belief by testimony, since you may still acknowledge the logical expertise of your testifier. And your reliance on this sort of expertise may be just as suspect according to the Radical Independence Approach as pure moral testimony which concerns ultimate moral principles rather than applied moral judgments.[56] Equally crucially, the Radical Independence approach need not assume that your belief formation, retention and revision tracks the moral truth equally well with or without guidance. Guidance lowers the cost of tracking the moral truth, and increases reliability.

On this approach, however, you are *not* permitted to rely on testimonial evidence regarding the truth of the fundamental moral principles relevant to your moral judgments ("pure moral testimony"). The Radical Independence approach must then assume at least the following: (1) all mature, adult human beings have roughly equal expertise in fundamental moral principles (see, e.g., Beerbohm 2013, p. 169, McGrath 2009, p. 325); and (2) this expertise is sufficient for our moral belief formation, retention and revision to track the truth in fundamental moral

[56] Cf. Jones's (1999) case in which Peter, a man deeply committed to non-discrimination, fails to grasp in particular cases that some particular person he interacts with is sexist, despite that his female colleague points out the relevant evidence to which he is supposed to apply his principles of non-discrimination. He feels awkward, since making the relevant judgment would mean "to accept and act upon a moral judgment on someone else's say-so" (ibid., p. 60). This is a case which starts out as guidance, but as it fails as guidance, it becomes in effect an instance of the kind of odd testimony mentioned above. Jones herself (ibid., p. 74), however, concludes that Peter should have accepted this testimony on grounds that his colleague is more experienced in detecting sexism, i.e., applying non-discriminatory principles to actual behavior.

matters.[57] These two assumptions seem sufficient to ensure that every mature, adult human being is capable of making moral judgments on her own, given an adequate supply of (perhaps testimonial) evidence concerning the relevant non-normative facts, and some guidance. So, the assumption seem to explain why you *need not* rely on testimonial evidence concerning moral fundamentals. But they cannot explain, on their own, why you are *not permitted* to use testimonial evidence concerning the relevant moral principles.

Note that an analogous restriction on the use of testimonial evidence would be very counterintuitive in at least some other epistemic domains, even given these assumptions. Even if all humans were sufficiently and roughly equally capable of acquiring justified beliefs about (all) mathematical truths, it would not seem objectionable for only some to do the job without reliance on testimony, and for the others to simply rely on the testimony of the few. In fact, it sounds a rational and potentially fair division of epistemic labor (cf. McGrath 2009, p. 328). Those who enjoy working through mathematical proofs (and prefer it given its opportunity costs) should take the lead, while others, for example, who prefer making good coffee should roast and brew the drinks mathematicians live on. True, those in the second group who merely know how much are 2 plus 2 on testimony, without being able to prove it (missing out on one of the most joyful moments of undergraduate logic courses where the set theoretic proof gets unveiled) are hardly justified to brag about any intellectual achievement (see Enoch 2014, p. 240 for a similar point about testimonial knowledge of philosophy). But, although no praise is justified, there seems no epistemic or moral reason to prohibit reliance on mathematical

[57] Beerbohm (2013) considers a formulation of this position as claiming that "[t]here are no genuine moral experts among us" (p. 169). This can be interpreted in two ways. One: the concept of expertise presupposes an unequal distribution of knowledge or justified beliefs, but knowledge or at least justified belief on fundamental moral matters is equally distributed. Hence none of us can be called experts, properly speaking. This interpretation does not bear on the argument to follow. Two: the claim may mean that there are no persons whose moral knowledge, though equal, is sufficient to qualify as expertise. This is a more worrisome interpretation which could, with additional premises, also help to explain why reliance on testimony is impermissible in this epistemic domain. But this interpretation of the claim is very implausible for other reasons.

evidence. So, the impermissibility of (practical reliance on) specifically *moral* testimony on the Radical Independence approach requires justification.

Let us turn, now, to the alternative to the Radical Independence. The independence of moral judgment could require much less on a different approach that I will refer to as the Minimalistic Independence approach. Essentially, Minimalistic Independence requires that you not give up your epistemic agency in moral matters. Epistemic agency consists in forming, retaining and revising beliefs for epistemically adequate reasons.[58] Regarding our concern with epistemic independence, epistemic agency also entails, in particular, that an epistemic agent does not believe, refuse to believe, retain or refuse to retain a belief in, a proposition by deferring to someone else's views *without adequate reason*.

Note two important features of epistemic agency. First: it is not conceptually necessarily domain-independent. I may be an epistemic agent relative to some of my beliefs (or some of the propositions I consider or am offered to believe), but not to others. Second: adequate epistemic reasons to believe or not to believe a proposition need not have to do with *the content* of that proposition. On the one hand, there are entirely content-independent epistemic reasons. For instance, if I have slept 3 hours before a conference presentation, and then after a tiring day, I go out for a conference dinner which includes free drinks, then after three hours of enjoying philosophers' company and good wine, I have good reasons not to form any beliefs on the basis of propositions I am exposed to during a philosophical argument. I am just not in the right condition for assessing the adequacy of primary reasons counting directly in favor or against the truth of a given proposition. And *this* in itself is an adequate epistemic reason. On the other hand, there are content-robust epistemic reasons which guide belief

[58] I take this to be a descriptive conceptual question: this is what epistemic agency *means*. The descriptive conceptual approach to epistemic agency has the consequence that there is no self-evident reason that a definition reveals which counts in favor of being an epistemic agent. We have to look for normative reasons to be an epistemic agent, which is exactly what I will take up after clarifying the Minimalistic Independence Approach.

formation, retention and revision conditionally on the propositional content of the belief(-to-be) in question, but do not count in favor of or against the truth of the particular proposition. This is crucial for us, as belief on testimony falls into this category (on the opacity of evidence in testimony, see Enoch 2014, pp. 236–238). For instance, if I am really bad at assessing the truth of normative policy proposals concerning gender equality, I have an adequate epistemic reason to rely on Justice Ruth Bader Ginsburg's testimony as far as *the relevant fundamental principles* go, but potentially not on Albert Einstein's testimony. The former has considered primary reasons in favor or against such policies for the past 30 years, and thus I can trust her to more reliably assess these primary reasons than I would. Albert Einstein was a genius in physics, but expertise is domain-dependent—so relying on his testimony, say, about the justice of gender quotas in company executive boards would hardly constitute an instance of belief formation based on adequate epistemic reasons. (The same holds, of course, about deferring to the testimony of Justice Ginsburg on some aspect of general relativity theory.)

The Minimalistic Independence approach need not assume either that moral expertise is roughly equally distributed or that everyone has a sufficient degree of it that allows her to make moral judgments without relying on testimony in the sense prohibited on the Radical Independence approach. Moral expertise may be just like any other kind of expertise: some have more of it, others less. The Minimalistic Independence approach still require those with less moral expertise to exercise epistemic agency in the moral domain: but this can be satisfied even by belief-formation based on epistemically justified testimony.[59] This is precisely what makes this approach minimalistic.

[59] As Julia Driver (2006) helpfully puts it, "When an agent decides to accept the testimony the agent is acting autonomously. There is an autonomous decision not to make one's own decision. So, one does not display independence of thought at this level. If the worry is that one is failing to make up one's own mind, then the worry involves a confusion over levels of decision-making" (p. 635). Cf. also Jones (1999), p. 74.

The appeal of this approach is threefold. First, it allows for independent moral judgment even if the moral labor of justifying moral principle is divided. It is thus less demanding on the individual. Second, it treats moral beliefs as no special domain: the same principles govern belief acquisition, retention and revision as in other epistemic domains. Since no distinction is made, there is one thing less to justify. Third, it establishes a conformity between epistemic and practical agency: both may be coherent with the (conditional) delegation of the assessment of primary reasons for an agent's actions or beliefs, respectively. But these are hardly decisive between the two approaches. What would justify one but not the other?

4.3.2. How to Choose between Radical and Minimalistic Independence?

Is Radical or Minimalistic Independence the right standard of independence in moral judgment? The question, I'm afraid, is malformed in this way, for at least two reasons. On the one hand, it fails to clarify what *kind* of standard we have in mind. Is independence in moral judgment an epistemic or a moral requirement? It could be both—or more precisely, it is an epistemic requirement which may be supported by both purely epistemic and (also) moral reasons. Some purely epistemic standards may permit or require one approach, whereas some moral standards (and their derivative epistemic requirements) may require the other one.

On the other hand, I have tacitly assumed so far—following the majority of the relevant literature —that one of the two approaches must be the right requirement for making moral judgments, first, in the entire domain of morality, and second, without regard to the function of the judgment made. Both assumptions may turn out to be false.

First, there may be *domain-specific*—epistemic or moral—reasons to prefer one or the other approach in particular domains of moral judgments. We may think, for instance, that independence is less demanding in making judgments of political morality, but it is more demanding in making judgments of personal morality. On the contrary, we may think that

there is at least a *pro tanto* moral reason not to rely on pure moral testimony just because it is an irresponsible way of behaving, or in a Kantian fashion, that it is conceptually incoherent with moral agency which entails moral self-legislation, and we have good (moral?) reasons to be self-legislating moral agents. In any case, the methodological assumption needs to be clarified: should we apply the same standard of independence to *all* domains of moral judgment or not? (see, e.g., Jones 1999, p. 58; Anscombe 1981, p. 45; cf. Driver 2006, pp. 621, 634).

Second and related to the previous point, the requirement of independence may vary considerably depending on the function of the moral judgment made. For instance, we may owe it to those nearest and dearest to us that we make moral judgments about their behavior only after a careful evaluation of all relevant evidence ourselves (maybe ruling out testimony even concerning the relevant descriptive facts!), and after a careful reflection on all the relevant moral principles, making sure that we are justified in our moral convictions beyond mere testimony. But surely we do not owe this same level of epistemic care when we morally evaluate a politician's behavior. This is partly due to the function of the respective moral judgments: while the previous one deeply affects your and your partner's, child's etc. relationship, the latter may only ground a small contribution to the social evaluation of a politician's performance. To take another example, Beerbohm (2013) suggests that citizens "have moral reason to form and manage principles of justice that are complete enough to guide them in their political environment" (p. 177). Whether right or wrong, this requirement is clearly domain-specific. Further, Beerbohm claims that with the increase of the moral significance of the judgment in question, there is less and less moral reason to defer to someone else—even including testimony that would be permitted under the Radical Independence Approach: "[a]s the moral significance of a structure-bearing decision

increases, a citizen's moral reason against contracting out deliberation increases" (ibid., p. 188).

These considerations lead to the following methodological conclusions. First, when we try to answer which approach to the independence of moral judgment is relevant to apply to voters, regard must be had to the normative role of voting as well as the normative role of moral judgment in voting—otherwise, the question is too underspecified to be answered. Second, in order to make the question specific enough, we also have to delimit the class of reasons in light of which we evaluate the normative role of voting, and hence the voter's required kind of independence. Accordingly, in the following, I will restrict the discussion to how the normative principle of popular sovereignty which underpins, albeit in different ways, both the Manipulation Argument and the Argument from Political Responsibility, bears on the require kind of independence of voters' *moral* judgment.

4.3.3. General Reasons to Prefer the Minimalistic Approach to Independence in Moral Judgment

In this section, I put forth arguments which show that fairly generally across the moral domain, we have good reasons to prefer the Minimalistic Approach to independence in judgment. I will often use voters as examples, to make the discussion as immediately relevant to my topic as possible. But this is *not* to say that despite the coming discussion, the Radical Independence Approach may not be the relevant one for the Manipulation Argument or the Argument from Political Responsibility. In later sections, I examine whether the normative role of voters' independent judgment justifies recourse to the more restrictive, Radical Independence Approach. All this section achieves, I hope, is to establish that if the Minimalistic Independence approach is generally to be preferred in the moral domain, it is the exceptions that need to be proved.

Both the Radical and the Minimalistic Independence Approach agree that a considerable amount of independence is required in at least the following respects. First, voters must be able to rely on descriptive, non-moral testimony which provides them with evidence relevant to moral judgments. That reliance, of course, requires second-order epistemic capacities: the ability to discern facts relevant to the trustworthiness of the testifier, the ability to make a judgment of trustworthiness based on these facts, and so on. If you do not possess these capacities, there are two options.

One: you can make a justified judgment on these matters without recourse to testimony. In this case, no concern of manipulation would arise. However, even if you are an epistemic superhero of sorts, given the complexity and abundance of descriptive non-moral information that sound moral judgments need to rely on in political matters, you are unlikely to be able to make justified judgments without *some* reliance on testimony. This brings us to the much more unfortunate but also more realistic second option: you simply cannot make judgments on the relevant questions voters are supposed to decide on, without testimony. Assuming still that you cannot rely on testimony to form justified beliefs, then, you can *only* be influenced in your voting-relevant moral judgments in non-rational ways, as far as the relevant descriptive factual evidence goes. In other words, even if your rely on epistemically justified beliefs concerning ultimate moral principles, your concrete moral judgments end up either random (not justified) or a result of manipulation (unjustified), as understood above, since they cannot rely on epistemically justified beliefs on relevant non-moral facts.

If, as we can expect, option two prevails, it is logically possible that you make a random judgment, which is thus free from manipulation: it just does not rely on any external influence, rational or non-rational. But this is very unlikely. We live in a social world, where we are constantly exposed to non-rational influence as we make our moral judgments in political matters. Our identities, or at least perceived identities, are partly shaped by the

judgments we make in this domain, and we want to belong. The rational pursuit of this interest, even at the expense of epistemic rationality, is widely observed in the mentally healthy adult population too (see Caplan 2008). It is reasonable to expect that the lack of capacity for rational deference in a given domain of knowledge only exacerbates this problem, and gives a free rein to our rational pursuit of practical interests, without any regard for epistemic rationality—which could still consist, for instance, in withholding judgment if I cannot access or process relevant evidence.

So, in this much, the two approaches to independence of moral judgment described above agree: the inability to rely on non-moral testimony in epistemically justified ways exposes voters to an excessive risk of manipulation, and thus endangers the equality of voters' influence in the elections. This is often ignored, but it may in itself be a potential reason to justify restricting the franchise of children and those living with certain cognitive disabilities. Here comes the disagreement.

The Radical Approach excludes the possibility of justified testimony regarding the ultimate moral principles relevant to moral judgments in politics. You have to rely on primary justificatory evidence, in this regard. But do we have good reasons for this strictness in the realm of moral knowledge? I will consider the most popular potential reasons.

Impossibility to identify reliable testifiers in a content-dependent way. One reason why pure moral testimony is objectionable as a source of voters' knowledge is simply because it cannot be determined whether such testimony is reliable, through no fault of the recipient of the testimony. There are at least two versions of this worry. On the one hand, moral testimony may not reliable because there is no method, independent of testimony, that can ensure reliable access to moral knowledge, and hence we cannot judge the overall reliability of a

testifier in this domain of knowledge (McGrath 2009, p. 333; Jones 1999, p. 69). In other words, you cannot identify moral expertise without having it.

This argument is not specific to political morality, and I do not think it is a good one at all for two reasons. First, as Enoch (2014) observes, this problem is neither specific to moral testimony, nor is it clear why it is deemed objectionable (p. 233, n. 7). In all domains of knowledge, we often want to rely on testimony precisely because we lack independent access to the body of knowledge that we must assume the expert does. Accordingly, we cannot rely on our very own knowledge in the same domain to check whether the testifier is reliable. Of course, this would not be the end of testimony as a source of knowledge. Some people do delegate epistemic tasks to *fellow experts* in the same domain: economists or historians do not themselves solve all the economic problems or historical qualms, but their expertise undeniably helps them identify fellow experts from whom they are satisfied to take testimony. But this is clearly not the only kind of case in which you can be justified in accepting someone's expert testimony in non-moral domains of knowledge either. So, there must be some further reason which blocks testimony in epistemic relationships of asymmetrical expertise.

Second, as explained above, proponents of the Radical Independence approach typically assume that moral expertise (i.e., the capacity to form, retain and revise beliefs about ultimate moral principles based on primary justificatory reasons) is equally and sufficiently distributed. But if this is true, that does not count against, but rather *in favor* of relying on someone else's moral expertise. If we all have moral expertise, then surely we are all in a position to tell who else has the relevant expertise in this regard. Moreover, selecting the right expert is no problem at all if *everyone* is a moral expert, by assumption? McGrath's case seems self-undermining: if moral knowledge is special because it is equally and sufficiently distributed, then we all have independent checks of the kind she wants us to have—and we don't even

need them. It is just that we may want to apply a division of epistemic labor in the moral domain too—and we are yet to see why this is a bad idea if it is bad at all.

Impossibility to identify reliable testifiers in a content-robust or content-independent way. The other argument which does a better job at explaining why pure moral deference should not be allowed relies on the assumption that it is very hard to identify reliable testifiers without reliance on the same expertise that the testifier has—and harder than in cases of non-moral testimony. Driver (2006, pp. 630, 639ff) argues that it is rather difficult to satisfy yourself about such content-robust or content-independent markers of a trustworthy testifier in morals such as reasonableness or impartiality (see also Jones 1999, pp. 72–73, and Sliwa 2012, pp. 179ff). This, I believe, may be especially true in the domain of political morality relevant to voters' knowledge. Moral deliberation in political matters characteristically aims not only at the truth, but also at convincing the other—perhaps more so than in other domains of moral deliberation. Political deliberation aims to convince others about the rightness or wrongness of policy proposals that we would all live by, so there are practical stakes for all participants.[60] Whereas citizens may gain some, but not a lot, by convincing their fellow citizens, politicians and sources of information depending on them, so they are anything but impartial. Most of the moral testimony that becomes salient before elections, in a campaign, comes from heavily biased sources.

However, this concern is not very specific to moral knowledge either. Experts such as economists, historians, sociologists, policy analysts also have their biases, and for fairly similar reasons. Ideological commitments, cognitive biases and selfish practical reasons—a job with the government or a party-affiliated think tanks, etc.—can all question the impartiality of expert testimony. Yet the conclusion is usually not to avoid such testimony.

[60] I assume here that participants to political deliberation are those who will be subject to the authority ensuing political decisions. While there may be exceptions—e.g., politically interested ex-pats who are not (yet) eligible to vote—, I take it that this is a generally plausible assumption.

Instead, there is a need to check testifiers for content-robust or content-independent credentials that would maximize impartiality.[61]

You might object that reliance on expert testimony concerning policy-relevant non-moral facts is necessary because we cannot all have the relevant kinds of expertise. But assuming we all have moral expertise, why defer to others if it is difficult to tell impartial and reasonable testifiers? My answer to the objection is twofold. First: you still do not have time to figure out all potentially relevant moral principles for yourself, from scratch, if you are a moral experts. As much as an economist does not have the resources to figure out everything in economics for herself, a moral expert may not have the requisite resources either to elaborate all moral principles relevant to voters' decisions without reliance on testimony. So, it is clearly rational to defer—the question is whether it is also morally permissible for the voter to do so on voting-relevant moral questions. This is where my second point becomes relevant: you may have no reason to assume that you are more reasonable or impartial than (some) others. On the contrary, if you are personally affected in a moral question, you may not be able to impartially make up your mind about what the relevant moral principles are in a case. For instance, you may be an Amish and want to educate your kid to the level and by the methods of your choice—and this may blind you to the fact that the child has an overwhelming interest in growing up to be an autonomous individual, and your right to family life, your right to the free exercise of your religion, or any other parental rights you have cannot override or outweigh that interest.[62] So, if you are an Amish, you may be more justified to defer to someone's testimony about what ultimate moral principles you should apply, than to find this

[61] An example of content-robust credentials: Does she have any particular stake in matters of political morality? Some examples of content-independent credentials: Does the self-proclaimed expert have a PhD in the field she is claiming expertise? Does she belong to reputable professional associations of her field? Has she received professional awards? From whom? Has she published in peer-reviewed professional publications? Has she received funding from an organization advocating for any particular public interest? And so forth.

[62] The U.S. Supreme Court unfortunately found otherwise, see *Wisconsin* v. *Yoder* 406 U.S. 205 (1972). This does not mean, of course, that the judges involved were any less (or no more) impartial or reasonable than the Amish parties to the case; it only means that the decision was an instance of their fallibility.

out for yourself—as long as your testifier is not especially invested in the Amish cause either as its supporter or its opponent. While it may be difficult to tell if a testifier is impartial, it is sometimes not difficult at all to tell that she is more impartial than you are. Deference to her moral judgment is not only morally permissible, but it seems to be the morally required thing to do.

Based on the arguments above, there are good *general* reasons to only require independence in moral judgment as it is spelled out by the Minimalistic Independence Approach. The Minimalistic Independence Approach shows a coherent picture of the requirement of independence across different epistemic domains. So, if the moral domain is special, or *a* moral domain—such as moral judgments relevant to voting—is special in that the Radical Independence Approach would apply to it, this specialness is in need of justification. The lack of special considerations applying to moral deference—including moral deference relevant to voting—is not in need of similar justification.

4.3.4. The Manipulation Argument and Independence

Can one avoid the excessive risk of manipulation which threatens horizontal political equality if you one is able to make minimalistically independent moral judgments? Given the specific role the independence of voters moral judgment has in the Manipulation Argument, is there any reason to revert to the more restrictive Radical Independence approach? Or can we apply the more permissive Minimalistic Approach—the default case for moral judgments, as I argued above—in evaluating voters' independence of judgment for the purposes of this argument?

I believe no special considerations apply here. Modern liberal democracies necessarily rely on a division of epistemic labor between citizens regarding all aspects of voter-relevant knowledge. On the large scale, NGOs and PACs routinely push moral agendas around

election times that are hard to evaluate without extreme time and energy put into them, even assuming we have the (moral) expertise to evaluate them. On a smaller scale, it seems to me unobjectionable that some people do care about voting and popular control of legislation as such, but they do not have the time or energy to engage with politics at all, let alone form their own opinion on the moral merits of party programs, for example. It seems justified practice that they defer to a friend whom they know to be very well-versed in these matters (cf. Brennan 2011b, pp. 95–111). So, as long as I can permissibly defer without making a moral judgment of my own on the merits of a voting-relevant question, why would it matter whether I *could* or could not make such a judgment? In either case, my deference results in the reasoned acceptance of a judgment, so it is not an instance of manipulation.

Therefore, the requirement of sufficient independence in the Manipulation Argument is much less demanding than what is commonly assumed. If you have the capacity to justify deference regarding ultimate moral principles, relevant non-moral evidence, and even testimony on how these conclude to applied moral judgments that are directly relevant to the way you vote (even if it is not "guidance" in the sense described above), this is sufficient capacity. You need not be able to reliably acquire, retain and revise moral beliefs based on primary justificatory reasons, and you need not be able to appreciate the resulting judgments as based on these reasons, as in guidance rather than testimony. Or at least, the Manipulation Argument does not require you to have these capacities in order not to be excluded from the electorate.

Accordingly, if my reasoning in the previous sections is sound, then a concern with manipulability cannot justify restricting the franchise of those who are incapable of forming, retaining and revising moral beliefs based on primary reasons, or who are unable to perform these epistemic tasks in a reliable manner. Instead, if the concern arises that individuals are not in possession of these capacities, we have reason to look further and check whether they

are as unable to rely on justified testimony instead in these cases as they are to act on primary reasons.

4.3.5. The Objection from Correlating Primary and Secondary Capacities

The Manipulation Argument does not require restricting the franchise of voters who cannot form, retain and review voting-relevant justified moral beliefs based on primary justificatory reasons (primary moral capacity) but who can form, retain and review voting-relevant justified moral beliefs based on testimony (secondary moral capacity). However, you might object that even if this finding withstands logical scrutiny, it cannot be but irrelevant since it is *impossible* to have secondary moral capacity without primary moral capacity.

There are at least two versions of this objection. I have, in fact, already replied to first version which states that the recipient of moral testimony cannot be justified in believing that her testifier is reliable without forming moral judgments using her primary capacity across a range of moral questions, and checking on the basis of her own judgments how well the testifier fares in making moral judgments (McGrath 2009, pp. 334–335). In effect, this objection holds that primary moral capacity is a constitutive element of secondary moral capacity. As I explained above in detail, I see no special reason why moral testimony should be vulnerable to this objection while testimony in other epistemic domains is not. There are at least some cases where relevant secondary capacities can distinguish more or less reliable testifiers, or even sufficiently reliable an insufficiently reliable testifiers.

A second, more sophisticated version of the objection may hold that even if it is possible to identify more or less reliable testifiers without primary moral capacity, it is impossible to identify *sufficiently* reliable testifiers. Everyone with some minimal life experience but no primary moral capacity may distinguish between an inebriated testifier and a sober one; and with some background knowledge and good social skills, you can also tell apart a severely

biased and a less biased testifier. However, this is not enough by way of a secondary moral capacity. Secondary moral capacity should not deliver merely comparative judgments about reliability as a testifier of moral principles or judgments; it should consist in telling sufficiently reliable testifiers from insufficiently reliable ones—I will refer to this principle as the Sufficient Reliability Requirement. And that requirement cannot be met, you could argue with McGrath (2009), without primary moral capacity.

The Sufficient Reliability Requirement is a controversial claim about secondary moral capacity. For example, Enoch (2014) explicitly disavows it:

> […] what matter for my purposes are not absolute success rates but comparative ones. What matters for me in deciding whether to defer to [the testifier], in other words, is not so much how reliable he is but to what extent (if at all) he is more reliable than I am. (ibid., n. 9 at p. 233; see also p. 235)

However, note that Enoch is interested in moral testimony as a means to minimize moral wrongdoing. In lack of primary moral capacities, identifying comparative better moral testifiers than yourself is sufficient to achieve that aim. Given that normative role of moral testimony, the Sufficient Reliability Requirement has no justification. If you need to act, and you want to be as sure as possible to avoid moral wrongdoing, it is good enough to rely on someone who is better at avoiding it, even marginally, than you are. But the Manipulation Argument poses a different normative aim: avoiding the excessive risk of voters being manipulated into a judgment in political morality. This argument does not assume there is any need to act. In fact, it is an argument about whom to grant voting rights, i.e., whom to enable to act, where action means participation in the collective exercise of political authority. So, the objection goes, the bar is higher here. We should prevent voters from casting votes based on moral beliefs they are manipulated into believing. It's not just that voters, once they vote should rely on less rather than more manipulated views. As a voter, I should rely on *sufficiently* good testimony—i.e., testimony that is sufficiently free of manipulation. Then

voters relying on their secondary moral capacity to form, retain or revise moral beliefs should be able to identify not only those who are better than they are in the exercise of primary moral capacity, but those who are good enough.

Fortunately, the Manipulation Argument provides no reason why my secondary moral capacity should not allow me to identify moral experts whose expertise is sufficient, and not only better than mine. The Manipulation Argument is only concerned with whether my risk of being manipulated increases beyond a threshold of excess—regardless of whether I use my secondary moral capacity, or a primary moral capacity, to form, retain or revise moral beliefs. And this depends not only on my ability to identify whether my testifiers have sufficient expertise; it also obviously depends on my ability to tell whether my testifiers are not reliable *despite* their sufficient expertise (e.g., because they are interested in misleading me). Additionally, individuals may well have misconceptions of their own reliability in the exercise of primary moral capacity. So, my low level of reliability and the overestimation of my own reliability in this regard both expose me to a risk of manipulation potentially more than relying on my secondary moral capacity. All in all, reliance on one's secondary moral instead of making judgments on the merits of a moral question *itself* need not expose one to an excessive risk of manipulation.

4.3.6. The Argument from Political Responsibility and Independence

Let us return to the Argument from Political Responsibility: what does it require from the voter in terms of the independence of her moral judgment? Would it require independence on the Radical or the Minimalistic Approach? Above, I concluded that *in some cases,* the argument supports a requirement to restrict the right of those to vote who cannot or are unlikely to base their votes on independent judgments. So, let us see which approach to moral independence fits with the argument.

The main concern of the Argument from Political Responsibility is that if you defer to your representative(s) regarding some voting-relevant moral question, you fail to contribute to the electoral control over legislation in the manner popular sovereignty requires. For instance, a candidate running for a seat in the legislative assembly says to you in a campaign ad: income taxation should be governed by the moral principle of equal contribution to public spending. Therefore, she says, flat income taxation should be supported. You consider her credentials: she used to be a vicar; she spent some time as a volunteer in Sub-Saharan Africa; on top of it all, she is a Labor candidate. So, you decide that she must know more about the fair distribution of individual contributions to public spending than you do. You also decide that she is not just someone whose moral expertise exceeds your, but also a trustworthy person. So, you cast your vote on her based on her moral testimony, and ultimately in support of flat income taxation.

The concern here is that you lose control over your representatives if you form, retain and revise voting-relevant moral beliefs on the basis of deferring to them rather than on the merit of the moral issues concerned. You may take someone's moral testimony, but you should not defer to the moral views of (some of) *those* whom you are meant to control. So, at first blush, the Argument from Political Responsibility seems to support the Radical Independence Approach.

But I have yet to answer the question: why is it worse for you to defer to your representatives and lose control that way than to not have control over them because you do not have a right to vote? Since I am interested in the required independence of voters' moral judgments in the context of voting rights restrictions, and not, e.g., in the context of the moral requirements of civic virtue, this question must be answered. The answer, I take it, has two parts.

Remember that your moral deference to representatives or candidates, according to the concern raised above, not only fails to contribute to the popular control of legislation—it may also *decrease* the level of control. Compare two electorates: one comprises only voters who make voting-relevant moral judgments using their primary moral capacity (or using their secondary moral capacity, but relying on the testimony of neither representatives nor candidates), the other one comprises the exact same voters plus you who make up your mind about voting-relevant moral judgments by deference to your representatives or candidates, in the exact same way as described above. The idea is that the latter electorate may exercise less popular control, since legislative representatives and programs will be more likely to represent representatives' own views *without* thereby representing at once the voters' views too.

However, the argument still does not make it clear *how* popular control is decreased by voters' moral deference to candidates or representatives. There are probably two intuitive lines of concern at work. On the one hand, the proponent of the concern may think that candidates and representatives are not trustworthy moral testifiers: they have selfish reasons of vote-maximization to cajole voters into believing that the moral ideals they proclaim are the right ones. Yet this does not show that moral deference to them is dangerous to popular control. It only shows that *unjustified* moral deference to representatives or candidates is more likely than in the case of fellow-voters as testifiers, or that the bar of justification for moral deference is higher. This is, of course, entirely compatible with the Minimalist Approach to independence of judgment. And it goes no way to show that voters' moral deference representatives or candidates always reduces, or is a risk for, popular control. The voter who justifiably accepts such testimony does exercise her own judgment independently of the representative or candidate in question, as she independently judges whether or not the latter is a reliable testifier. So, the generally lower reliability of representatives or candidates on

voting-relevant moral principles provides no reason in favor of the Radical Independence Approach.

On the other hand, the concern may be deeper: you may think that *even if* the candidate or representative to whom a voter or voters defer on voting-relevant moral principles is a reliable testifier, popular control is diminished by such deference. Popular control, you may insist, requires that voters cast their ballot based on the voting-relevant moral judgments they make judging the relevant issues on their merits. But why? The worry may be that voters' choices are effectively superfluous if they do not cast votes based on voting-relevant moral judgments they make using their primary moral capacity. The moral guidance of the polity falls in the hands of the political elite: voters do not even have as much control as to meaningfully nod at the moral principles representatives promise to pursue—since belief in those very principles can be based on deference to the representatives, if we only insist on Minimalistic Independence of judgment on the voters' part. Popular control, you may think, is compromised because voters do not set the agenda of democratic decision-making. Candidates and representatives determine the moral agenda, and—if they are reliable testifiers—voters merely learn from this agenda the moral principles that they want their legislators to pursue in politics.

However, let me clarify why it is not objectionable if representatives or candidates set the moral agenda. First, *the freedom representatives enjoy in setting the moral agenda is overestimated*, in one respect. Setting the agenda merely means that the bulk of the epistemic work of finding right moral principles of justice for policy making *may* fall upon representatives or candidates. It does *not* mean that voters cannot or do not participate in this epistemic task. The worry might be that if citizens did not participate in setting the agenda, ultimately only the options favored by representatives and candidates would be available for political decision-making. But this would only be a concern if voters did not have the right to

stand for elections themselves, and they did not have others means to put pressure (e.g., by the regular exercise of the freedoms of speech and press) on candidates, in order to set an agenda favorable to a significant subset of the electorate. These are all available means in liberal democracies to take control of the democratic agenda. As long as citizens do not lose these options, justified deference to representatives or candidates does not seem problematic. Citizens have an effective and equal opportunity in a liberal democracy to make voting-relevant moral judgments bases on primary reasons, or by deference to someone else than representatives or candidates if they wish to. This should satisfy the requirement of popular sovereignty: citizens need not rely on candidates or representatives moral testimony if they do not want to, and should not if they are justified to do so.

Second, the worry *underestimates the indirect control voters have over the moral agenda by choosing reliable moral testifiers*. You can effectively shape the moral agenda as a voter not only by voting for candidates with programs that rely on certain moral principles. You can also for candidates whose moral testimony you can trust. This is an important, even if somewhat indirect way to ensure popular control over the moral content of legislative decisions. Moreover, while it is debatable whether this kind of control is sufficient to ensure that voters are in the "driver's seat", to use Christiano's phase (2012, p. 33), it is certainly a necessary condition of popular control. This is because party programs radically underdetermine even the moral content of foreseeable legislative action, on the one hand, and also necessarily extend to expected areas of legislative action, on the other. The moral content of legislation must be controlled, in the appropriate sense, even in unexpected situations in which representatives cannot follow their own, originally advertised programs, or there is nothing to follow in it that would apply to the unexpected situation that requires legislative action. In these cases, there is no other way available for the voter but moral deference to her a reliable testifier. Therefore, choosing candidates based on how reliable moral testifiers they

are is a crucial way to control the moral principles underpinning legislation. Deference in moral matters to representatives, then, is not only permitted but inevitable in modern liberal democracies—and the secondary moral capacity to choose the right candidates to defer to is crucial, and often sufficient, to contribute to the popular control over representatives.

4.4. Conclusion

While the previous chapter explored an argumentative strategy based on internal justifications of the *permissibility* of disenfranchisement, this chapter focused on internal justifications of a *requirement* to disenfranchise due to a lack of relevant competence. The two justifications examined here are internal, using the terminology of the present thesis, since they both ultimately rely on the principle of popular sovereignty, just as much as the justification of the right to vote itself.

First, I examined the Manipulation Argument, which aims to protect horizontal political equality, i.e., equal voting power as between citizens *qua* voters—a requirement of popular sovereignty. This argument identifies the lack of independence in moral judgment as a source of an excessive risk to horizontal political equality. The voter whose vote does not reflect an independent judgment essentially provides a vehicle for another person's electoral will—thus doubling the voting power of the latter person, or effectively enfranchising someone who is legitimately not enfranchised (e.g., a citizen and resident of a different country, but a close relative of the manipulated voter). The Manipulation Argument assumes that the integrity of the electoral process, which protects political equality, cannot be guaranteed in any other way than by exclusion from the electorate—otherwise, it could not justify even a *pro tanto* requirement of disenfranchisement.

This chapter shows, however, that the Manipulation Argument is dependent on an account of judgment independence. I assumed, following Christiano (1996), that in a division of labor

between voters and representatives, voters are responsible to decide on the *moral* direction of legislation, as expressed primarily by their votes on candidates' programs. I have shown, in this light, that voters are sufficiently independent in making moral judgments even if they rely on pure moral testimony from other voters—as long as relying on the particular testifier is justified. (I referred to this position as the Minimalist Approach to independence in moral judgment.) This conclusion grounds two significant contributions to the political theory of voting rights and their competence-based restrictions. One: a too rigid interpretation of voters' moral independence is significantly overvalued; a more lenient interpretation is sufficient to ensure horizontal political equality. Two: if voters do not have a capacity to process primary moral reasons and make a voting-relevant judgment on that basis, they may still successfully fend off manipulation if they have a capacity to identify reliable moral testifiers and vote based on—thus, justified—moral testimony. This result suggests, at least as a matter of logical possibility, that the Manipulation Argument may not support disenfranchisement to protect political equality even in the case of voters totally incapable of processing primary moral reasons—as long as they have a capacity to process secondary moral reasons, i.e., reasons about whom to defer to on moral matters.

If, all things considered, the equality of the franchise of third persons is severely threatened by the enfranchisement of individuals who are at excessive risk of manipulation due to a lack of independent judgment in the minimalistic sense defended above, *and* requirements of the all subject principle (also a corollary of popular sovereignty) do not provide weightier countervailing considerations, *then* these individuals may indeed be required to be disenfranchised. I will not make a final assessment which includes weighing up horizontal political equality and the all subject principle. I only wish to point out that what makes this assessment very hard is that it is required by a practical conflict *within* the ideal of popular

sovereignty. After all, both horizontal political equality and the all subject principle, as detailed in Ch. 1, are derived from the principle of popular sovereignty.

Second, I also reconstructed and criticized the Argument from Political Responsibility. This argument assumes that popular sovereignty also requires vertical political equality, which in turn requires voters' control of the moral agenda and direction of legislation. But this control cannot take place if voters do not show sufficient independence in their moral judgment vis-à-vis candidates and representatives. So, voters who cannot independently make moral judgments cannot take control over representatives in the relevant way, and threaten vertical political equality, and—the argument concludes—they should not vote at all.

In response to this argument, I propose two considerations why it should not unconditionally ground even *pro tanto* reasons for excluding those who cannot form moral judgments on their own, and are likely defer to candidates or representatives in making voting-relevant judgments. One: popular control should be understood in a collectivistic manner, and thus every single individual inability to contribute to this control need not undermine vertical political equality. Two: it is part of the regular working of representative democracies that voters only influence the moral agenda of political decision-making in indirect ways. Voters should even aim to choose candidates and representatives whom they regard reliable moral testifiers; in liberal democracies, voters cannot but defer to the moral judgment of representatives in lots of cases.

5. Externally Justified Restrictions

5.0. Introduction

In the previous chapter, I examined and partially defended one set of arguments that may provide *pro tanto* reasons against enfranchising those less-than-minimally competent. In this chapter, I also examine an argument for exclusion: for a change, an external justification of competence-based disenfranchisement. This rather influential justification, proposed by Jason Brennan, argues for the disenfranchisement of voters who do not have "sufficient moral and epistemic competence" (Brennan 2011a, p. 701). Brennan assumes that all of us who are subject to political authority have a rightful claim against incompetently made political decisions. And in democracies, it is voters who make decisions to a large extent—some competently, others incompetently. But since each one of us has a claim against incompetent decisions—so the argument goes—each of us also has a rightful claim against the enfranchisement of incompetent voters too.

In this chapter, my aim is twofold. First, before criticizing the particular argument Brennan proposes, I make some general observations about externally justified competence-based restrictions. In Ch. 2, I gave an overview of the general characteristics of internally justified competence-based restrictions on the franchise—here, I provide a similar brief introduction to the other major justificatory strategy. While this part paves the way for the criticism of Brennan's argument, I hope it also makes an independently useful methodological contribution to the literature on competence-based restrictions on the franchise. Together with the description of internal restrictions, now we have a full conceptual map on which we can place different accounts of competence-based restrictions; and based on this typology, we can also better see the strengths and weaknesses they predictably share with other members of their own class.

Second, I argue that Brennan's argument is invalid. Even if we do have a rightful claim to competent political decision-making, it does not follow that we have a right to a competent electorate, let alone to an electorate that solely consists of competent voters. Competence may be a requirement of political decision-making as a whole, but at least in representative decision-making, it should not restrict electors' right to vote. My conclusion is rather uncompromising: while Brennan's argument is best interpreted as providing an *all things considered* reason for competence-based exclusion from the electorate, I hope to establish that the argument does not even provide a *pro tanto* reason for such exclusion. In fact, this lands us with a fairly optimistic upshot: it is possible that democratic rights and the competent exercise of political authority go hand in hand.

My critique of Brennan's Competence Argument will take the following form. Basically, I lay out what I take to be one decisive objection to the argument—the objection I will refer to as the Authority Holism Objection. The gist of this objection is that it is the exercise of political authority as a whole that should be competent, rather than each stage of political decision-making. Accordingly, in representative democracies, I argue, the right not to be subject to incompetently exercised political authority, the latter being taken as a whole, can be fully respected if voters are not competent, but post-voting stages of political decision-making are. The rest of the chapter is taken up by replying to four potential challenges that supporters of the Competence Argument could offer in reply to my objection. The first challenge relies on Brennan's analogy between juridical decision-making and electoral decisions. The second challenge questions the fairness of shifting all the epistemic burdens of competent political decision-making away from the electorate. The third challenge states that representatives' duties of representation exempt them from the requirement of competent decision-making, and hence the latter duty falls back onto voters themselves. The final challenge states that even if representatives have higher burdens of competence than voters, there is no reason why

voters should be entirely exempt from these burdens. By hopefully overcoming all four challenges, I defend my claim that Brennan fails to justify disenfranchisement based on voters' incompetence.

5.1. External Justifications of Competence-Based Restrictions

In the previous chapters, I have devoted considerable attention to justifications of competence-based restrictions on the franchise—or internal restrictions, for the sake of brevity. In this chapter, however, I wish to examine and criticize, for a change, an influential external justification of competence-based restrictions on the franchise—or, for short, an external restriction. Before focusing on the particular account, however, I wish to provide a brief, general characterization of external restrictions.

Unlike internal restrictions, external restrictions are no error theories of enfranchisement. They are not intended to undercut a *pro tanto* reason to give someone the right to vote. Instead, they justify restrictions by reference to some value that is independent from the justificatory base of the franchise (if they assume there is any such thing). The reason to care for competence is not the same as the reason to care for enfranchisement. This is what makes them 'external': the justification of the right (again, if any is assumed) and the justification of the restriction cannot be derived from the exact same source of reasons.

External restrictions may or may not take a stand on whether there is any *pro tanto* reason for enfranchisement. If there is not, of course, their job is easier: they merely show that there is a reason against enfranchisement, and the work is considered done. However, if there is assumed to be *pro tanto* reasons in favor of enfranchisement, an external restriction is justified by pointing to a *pro tanto* reason against enfranchisement, and showing that *all things considered*, the reason for disenfranchisement prevails.

The prevalence of the *pro tanto* reasons supporting competence-based restrictions can take various forms. They may be simply weightier reasons than those supporting enfranchisement. Or they may not be balanced against reasons in favor of enfranchisement, but rather act as a constraint on them. Refuting an external justification may accordingly take the form of showing that the right balance be hit (which is not the one favoring disenfranchisement), or showing that the reason for disenfranchisement is not a constraint *and* once balanced against countervailing reasons, it turns out to be weaker than its competitors. Sometimes, however, it is not necessary to identify the exact way reasons for disenfranchisement prevail in an external justification of competence-based restrictions, in order to successfully challenge the justification in question. This is possible when the strategy to challenge the external restriction is to show that it mistakenly assumes there is *any* conflict of reasons. Once we can show this, the external restriction collapses, no matter which method of prevalence it relied on. This is exactly the argumentative strategy that I aim to use against a particular account of external restriction in the rest of this chapter.

5.2. Brennan's Competence Argument

One of the most influential justifications of competence-based restrictions on the right to vote, Jason Brennan's Competence Argument, argues for the disenfranchisement of voters who do not have "sufficient moral and epistemic competence" (Brennan 2011a, p. 701). The main motivation in Brennan's argument to require voters to be competent is that voting is a form of exercising political power over others (Brennan 2011a, p. 702)—and those subject to this authority have a right to it being competently exercised over them. As Brennan puts it:

> The Competence Principle. It is unjust to deprive citizens of life, liberty or property, or to alter their life prospects significantly, by force and threats of force as a result of decisions made by an incompetent or morally unreasonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way. (Brennan 2011a, p. 704)

Competence, crucially, is not an ultimately consequentialist requirement on Brennan's account. The argument does *not* assume that incompetent voting is conducive to bad or harmful policies, or that it would result in the violation of other citizens' rights.[63] In fact, competent decision-making may yield bad policies, and incompetent decision-makers might accidentally make very good policy (Brennan 2011a, p. 705). So, competent decision-making, in Brennan's argument, does not mean *reliable* decision-making, which is a result-driven epistemic criterion.[64] Instead, competent decision-making means that decisions are made *for the right kind of reasons, in the right kind of way* (Brennan 2011a, ibid.). This interpretation of the Competence Principle is significant as it has an intuitive pull for a wide range of liberal democrats who are committed to some version of public reason liberalism (e.g., Rawls 1993, Gaus 1996; even Waldron 1999, pp. 221ff, 258). Although public reason liberalism typically requires that it should be *possible* to justify political decisions based on a specific kind of reasons, it does not sound obviously unreasonable to require that decisions be *actually* made based on the right kind of reasons, and / or in a way that ensures compliance with the right kind of reasons. This is what the Competence Principle requires.

The Competence Argument does not assume that competence grounds a rightful claim to exercise political authority. It merely assumes that whatever grounds such a claim, this claim can be *constrained* by the Competence Principle. This is what makes the argument an *external* justification of competence-based disenfranchisement. This, Brennan argues, is what makes the resultant distribution of voting rights unobjectionably reliant on competence-based

[63] Brennan (2011a, pp. 705, 707–708) also alludes to a possible consequentialist argument in favor of the Competence Principle, as a way to avoid undue risk: "The governed have a right not to be exposed to undue risk in the selection of policy or of rulers who will make policy." The avoidance of exposure to undue risk is one of Brennan's main arguments for a duty to refrain from incompetent voting too (Brennan 2011b, pp. 79ff; cf. Brennan 2009). However, this consideration seems to be only tangentially supporting the Competence Principle (see Brennan 2011a, pp. 709–710). In any case, the consequentialist argument is much weaker than the one reconstructed above, since it fails to establish a link between the disenfranchisement of *every single* incompetent voter, on the one hand, and the expected outcome of avoiding the exposure of the citizenry to undue risk, on the other. Therefore, out of charity of interpretation, I will insist on the non-consequentialist reading of the argument.

[64] I will discuss result-driven competence-based restrictions, mostly as ways to protect the substantive equality of citizens, in more detail in Chapter 7.

considerations. In other words, this is what saves the (at least moderately) democratic character of the argument, in Brennan's view, from deterioration into an objectionably epistocratic venture.

The argument can be reconstructed as follows:

> (P1) Individuals have a *pro tanto* right not to be subject to political authority exercised over them incompetently.
>
> (P2) Voting is an exercise of political authority.
>
> (P3) There is no such *pro tanto* right to the exercise of political authority that is weightier than (or is not constrained by) a right not to be subject to political authority exercised incompetently.
>
> (C1, from P2&P3) There is no such *pro tanto* right to vote that is weightier than (or is not constrained by) a right not to be subject to political authority exercised incompetently.
>
> (P4) Some voters are incompetent: i.e., they make electoral choices incompetently.
>
> (C2, from P1, C1 and P4) Individuals have a *pro tanto* right not to be subject to the authority exercised by incompetent voters, and incompetent voters do not have a weightier *pro tanto* right to vote (or one unconstrained thereby).
>
> (C) Incompetent voters should not be allowed to vote.

Note that the argument, in the present reconstruction, does not take a position on whether there is a *pro tanto* right to exercise political authority, through voting for representatives or for policies or otherwise.[65] The Competence Argument is reconstructed here so as to accommodate both those who believe there are *pro tanto* participatory rights and those who deny their existence. It is only assumed that *if* there are such rights (P3), *then* their relative weight is lower than—or they are constrained by—the right not to be subject to incompetently exercised political authority (P1).

[65] While Brennan does not deny the existence of such a right, he is explicitly skeptical about both the individual and the collective value of a scheme of individual political participatory rights (see, e.g., Brennan 2012, p. 2).

The Competence Argument is a radically revisionist argument for at least five reasons. First, it is radical because it justifies electoral exclusions not only on the basis of a lack of the relevant capacities, but also based on the low probability that someone who has the relevant capacities would use them, or even the low probability that they would use their relevant capacities *well*. (So, it applies much more extensively than Christiano's Pointlessness Argument discussed in Ch. 2.) Other constituents of voting competence besides a capacity to pursue moral reasoning, such as knowledge of reasonable moral principles (Brennan 2011a, p. 708), empirical knowledge relevant to making sound applied moral judgments (ibid., p. 708), if insufficient, are all adequate reasons for electoral exclusion.

Second, the argument is radical since it justifies full disenfranchisement. It does not merely justify a lower weight attached to incompetent voters' votes. Non-scalar Disenfranchisement is justified here by the justificatory motive of the competence-based restriction. Were it for the objectionable consequences of incompetent voting, less than full restrictions on the franchise may be consistent with the justification of the restrictions. But the arguments finds it objectionable that someone exercises *any* political authority in an incompetent manner. Further, recall that competence is not the justificatory ground of, but a constrain on, the right to exercise political authority. Thus it coheres well with this normative role that the distribution of political authority should not be done in proportion to competence, but rather political authority should not be distributed to the incompetent at all. So, Non-Scalar Disenfranchisement is due to the normative reasons for disenfranchisement in Brennan's theory, as opposed to Christiano's Pointlessness Argument, which explains the non-scalar nature of disenfranchisement by reference to the descriptive, metaphysical fact that those who may be disenfranchised uniformly and equally (viz., totally) lack the capacity to make moral judgments.

Third, the Competence Argument is radical because it seems to identify a very high threshold of competence, at least in contrast to current legal practice. Voting should be done in accordance with justified beliefs, where epistemic justification should follow externalist, rather than merely internalist standards. Fourth and finally, the Competence Argument is radical but not revisionist in so far as it justifies a requirement, and not a mere permission, to restrict the franchise of incompetent voters. It offers reasons for the moral desirability of excluding incompetent voters from the franchise, rather than just showing why their exclusion would not be morally objectionable.

Finally, the argument is especially radical because it delivers an *all things considered*, rather than a merely *pro tanto* requirement of electoral exclusion. The competence principle, it seems, is meant to be weightier than, or a constraint on the application of, all other considerations that ground a *pro tanto* right to vote. So, the argument, unlike the ones examined before, leaves no room for countervailing reasons to override its conclusion, as it appears to have already established the balance of *pro tanto* reasons.

5.3. The Authority Holism Objection

Radical and intuitively compelling as the Competence Argument may be, I want to argue that it fails in light of what I will refer to as the Authority Holism Objection. The objection relies on showing that the Competence Argument falls prey to a fallacy of composition. It goes as follows. The argument uses "exercise of political authority" in two different senses. On the one hand, it refers to the exercise of political authority holistically, in a sense which encompasses the complex procedure of political decision-making, potentially including multiple procedural stages from elections to legislation to constitutional review. These stages may all contribute to the making of morally binding and coercively backed-up law—the exercise of political authority over citizens. This is the holistic sense of the expression. On the

other hand, the "exercise of political authority" may refer to *any* act of any agent, in any of the procedural stages which the holistic sense of the expression comprises. This is the atomistic sense of the expression. Crucially, voting is an exercise of political authority in the atomistic sense—at least typically, but I will say more about this below.

The objection I wish to defend in this chapter holds that (P1) and (P3) in the argument above use "the exercise of political authority" in the holistic sense, while (P2) uses it in the atomistic sense. The former premises identify normative requirements for the exercise of political authority as a whole, but it does *not* follow that the same normative requirements apply to any particular atomistic procedural stage of the exercise of political authority. Therefore inferences in the argument are invalid.

The objection saves the incompetent vote, as long as we assume, as I do, that there is a *pro tanto* right to vote. It underscores that there is no point in considering the weight of this right relative to the weight of the right not to be subject to incompetent political authority. These two *pro tanto* rights need not even compete. The exercise of political authority, holistically speaking, may be competent even if one particular procedural stage of political decision-making—e.g., voting—does not exhibit competence at all.[66] In the following, I wish to defend the Holistic Authority Objection against four potential challenges that may seem to support the assumption that voting as the first procedural stage of the exercise of political authority is also subject to the competence requirement, and hence the validity of the original argument.

Note that in my argumentation, I ignore an important complication concerning the structure of political decision-making mechanisms. Namely, that it is in fact a series of *collective* decision-making mechanisms (the electorate makes a decision; the legislature makes

[66] Gerald Gaus (2010) probably relies, implicitly, on a similar claim as he argues for the permissibility of expressive voting, emphasizing the distance between a voter's (or, collectively, voters') decision and legislative outcomes: "Voters have expressive political concerns, and precluding them from politics needs strong justification: given the indirect links between voting and legislative outcomes, it is not obvious that such a justification is forthcoming".

decisions; court benches make decisions etc.). Each of these phases consists of *individual* decisions that constitute the collective ones in a specific procedure. These are two levels of atomism, if you like—and my argument does not distinguish between them. However, this should count in favor, rather than against my argument. For I principally argue that competence should not even be used to each collective phase of decision-making. Even if the electorate as a collective phase in the procedure should be competent, it takes a further argument from there to a requirement of competence that applies to each and every individual voter, severally. I try to be as charitable as possible by simply assuming that this further step can be made—that is why is concentrate on the collectivistic 'phase' level of atomism as the target of my criticism.

5.4. Defending Authority Holism

5.4.1. The Analogy with Legal Remedies

The proponent of the Competence Argument may try to defend it by can further elaborating on an analogy between jury decisions and voting that Brennan (2011a) himself relies on. Brennan makes it clear that "juries lack authority and legitimacy when they reach answers in unacceptable ways, regardless of whether their answers are correct or incorrect" (ibid., p. 705). In fact, in order to support the application of the competence requirement to the electorate, Brennan draws on the intuitive analogy between juries and electorates: both make decisions that may significantly alter the life prospects of others by the exercise of political authority backed up by coercive means.

Based on the analogy above, the Competence Argument may be defended by the following logic. Criminal proceedings, just like political decision-making, have various procedural stages where decisions may or may not be made in a competent way. A jury returns a verdict, for example, at a first-instance trial court; then the decision may be appealed, so that an

appellate court reverses or upholds the decision of the first-instance court with final legal effect. Assume that criminal convicts have a right to appeal (as they should). If this is so, the proponent of the Competence Argument could put forth the following challenge: does it follow that criminal suspects have no right that the first-instance court should decide in a competent way in their case? Do they only have a right not to be subject to the decisions of an *overall* incompetent criminal justice system? Intuitively, this is not the case. We have a very strong intuition that criminal suspects have a right against incompetently made decisions in their case at *each and every* procedural stage in the criminal proceedings. The availability of further legal remedies does not void the competence requirement for lower level decision-making By analogy, so the challenge continues, the fact that voting may only be one of the several procedural stages in political decision-making should not be assumed to block the application of the competence requirement to electoral decisions—unless a principled disanalogy can be shown.

There is, however, a principled disanalogy between political decision-making and court procedures. Court procedures are normatively justified *only because* of their competence. Competence is not merely a constraint on participation in criminal adjudication. Competent decision-making is the very justificatory function of adjudication, and hence competence is what grounds anyone's claim to participate in it. No-one has a *pro tanto* moral right to participate in criminal adjudication by virtue of anything else but an ability to competently contribute to judging legal cases. This is in stark contrast with Brennan's view on political participatory rights:

> The competence principle does not say that experts should be bosses; it says that incompetent and unreasonable people should not be imposed upon others as bosses. The competence principle leaves it open whether we should have bosses at all, and what the grounds would be for making some people bosses. (Brennan 2011a, p. 713)

In other words, Brennan does *not* claim that competence is what grounds any *pro tanto* right to exercise political authority, including voting rights. Therefore, while there is simply no *pro tanto* justification to allow a court to make potentially binding decisions unless it makes decisions in a competent way, the same is not true about voting—according to Brennan himself. The different role of competence in justifying adjudication and political decision-making—aim versus constraint—thus also explains why competence is required not only holistically in legal adjudication, but also atomistically, with regard to every procedural stage; whereas it may not be required atomistically in political decision-making—or at least, the jury analogy goes no way to justify such a requirement.

5.4.2. The Unfair Distribution of Epistemic Burdens

Assume that in a liberal democracy, the complexity of the political decision-making process allows correcting for the incompetence of voters. In other words, incompetence at the first stage of the process does not translate into overall incompetence: ultimate decisions can still be made in the right ways, for the right kinds of reasons. Liberal democracies are representative democracies, where it is typically legislative representatives, and not voters, who make law. Further, in liberal democracies, constitutional review may overturn incompetently made legislation. As a result, not even incompetently made law could, in principle, survive unless it survives another stage of decision-making that can be competent. Still, it could be objected that it would lead to an unfair distribution of epistemic burden if only the later procedural stages in the exercise of political authority were required to make competent decisions. Decision-makers at these later stages would bear all the burden of competent decision-making, while decision-makers at earlier stages—to wit, voters—would be free from any burden whatsoever.

But the claim of unfairness is unfounded. First, consider that the cost of deciding in a competent way may well be lower for legislative representatives. On the one hand, accessing information and making informed, rational decisions has no opportunity cost for them in as much as it is their very job to do so. In contrast, citizens without legislative representative mandates have other jobs, so the more competent they want to become, the more of their free time they have to give up, and / or the more of their private resources they need to invest into building their own competence (Christiano 1996, pp. 105ff, 123–124; Downs 1957). On the other hand, it is not only that representatives do not need to sacrifice personal resources for the acquisition of competence: a whole set of institutions makes (and should makes) available to them information that contributes to their competent decision-making (Kis 2009, p. 582). Think for example, about personal assistants, parliamentary committees, administrative agencies, lobby group, statistical offices etc. which produce information representatives have privileged access to. All this is not directly available to the average voter.[67] Given the hugely asymmetrical costs of competent decision-making, *ceteris paribus*, it would already seem positively unfair if voters did not have to bear *less* of the epistemic burdens of overall competent decision-making than do legal representatives.[68]

Second, setting aside the differential opportunity costs, we have an additional reason against the unfairness of requiring legislative representatives, but not voters, to make competent decisions. This reason has to do with *role responsibilities* rather than the costs of bearing the epistemic burdens. Representatives have role responsibilities: it is not only their special

[67] Voters, of course, should be able to have access to all or most of this information as a result of exercising their freedom of information rights. However, this is more costly (at least it has temporal costs) than direct access. More importantly, though, voters cannot *order* information products or services from the same institutions, whereas representatives are normally in a position to do so. (In parliamentary democracies, this is especially true of representatives affiliated with the government.) Further, given the structured nature of deliberation in representative institutions, representatives are able to make better use of even the *same* amount of information than voters could (see Kis 2009, p. 582; Landemore 2013, pp. 105ff, and also Urbinati 2006).

[68] The same observations apply, *mutatis mutandis*, to judges who fulfill functions of constitutional review: competent decision-making is their very job, and they have clerks etc. at their disposal to serve them with requisite information on demand and potentially even beyond that.

opportunity, but also their special duty to make competent decisions using their special opportunity to do so at a lower cost. This is so because representatives are the last decision-makers in the chain of agents exercising political authority who have the ability to finalize or overturn political decisions. If representatives had (or should have) imperative mandates instead of free ones, they would not have this responsibility. But if there are good moral reasons to allow representatives *not* to comply with (what they perceive as) the electorate's wishes, it follows that they also should bear higher burdens to make competent decisions.

Note that this special responsibility is well-entrenched in liberal democratic institutions of representation. In liberal democracies, legislative mandates are characteristically unbound. In other words, representatives have robust (though not limitless) legal immunities between elections against removal from their office or (some) other sanctions for their legislative decisions, whether they follow voters' wishes or their own programs or not (Manin 1997, pp. 163–167). The freedom of legislative mandates does not correspond to Hohfeldian privileges or claims—no-one has a *pro tanto* moral right to be given a free reign as a legislative representative. But the freedom of legislative mandates is necessary for the effective pursuit of longer-term legislative aims, and thus it is a requirement of popular sovereignty—a moral requirement (Mráz 2015).

Once representatives have the freedom to act contrary to the perceived (or explicitly expressed) wishes of the electorate, the duty falls upon them to check electoral decisions for their competence, and to override them if necessary to make competent decisions. For example, if representatives have good reason to assume that voters' decisions were not made, or their perceived or expressed preferences were not formed, after a careful consideration of the information that would be necessary to make competent decisions. Overriding a decision need not mean that the decision is reversed or changed in its substance: it may only mean that if it turns out that the decision was not made in a competent manner, it has to be remade in a

competent manner. The decision reached (incompetently) by the electorate and the one reached (competently) by representatives may turn out to be one and the same.

5.4.3. The Objection from Duties of Representation

At this point, you may object, though, that if representatives have any duties of representation which entail an obligation to shape the content of legislation in accordance with the voters' wills—e.g., by acting on a party program—, then voters certainly cannot be exempt from a requirement of competent decision-making. If this is so, the objection goes, my argument in favor of imposing the epistemic burdens on representatives fails.

The freedom of legislative mandates does *not* entail, indeed, that representatives would be free of any moral duties of representation. The content of these duties includes channeling certain views into legislative deliberation—views, for example, that appeared on a given representative's (or her party's) program and which was at least among the reasons for which voters elected her. Duties of representation may also include a requirement to vote in certain ways in accordance with the express or reasonably inferred will of voters (e.g., in line with the program parties or representatives advertised before they were elected). In political issues that were unexpected to come up when a representative published her program as a candidate, she may have a duty to make an informed guess at how her constituency would judge the issue at hand.[69]

The objection can be formulated as a dilemma that I will refer to as the Representation / Competence Dilemma. On the first horn, if representatives are *not* morally free to make decisions in a domain of decision-making, but have representative obligations to follow the choices or preferences of the electorate, then the electorate cannot be exempt from the requirement of competence in that domain of moral decision-making. On the second horn of

[69] I set aside here the complex question as to who is a representatives constituency in the relevant sense—those who voted for her, those who voted in the electoral district she is a representative of, or all voters etc.

the dilemma, if representatives have duties of competence in a domain of decision-making, then they must be morally free to make decisions in that domain, and have no representative obligations to follow the choices or preferences of the electorate in that domain. To illustrate: if the electorate (but not the legislature) is exempt from competence requirements that concern, for example, economic knowledge and its application to policy-making, then representatives must be morally free to decide on the economic aspects of policy making.[70]

In other words, the dilemma points to the assumption that the electorate must bear the epistemic burdens of those and exactly those decisions which it is morally free to make and to which, representatives, by duties of representation, are obliged to give legal effect. Duties of representation and competence are mutually exclusive as far as the domain of decision-making they apply to is concerned.

But the dilemma is, fortunately, false. Duties of representation and competence are *not* mutually exclusive as far as the domain of decision-making they apply to is concerned. The right assumption, instead, is that representatives must bear the epistemic burdens of those and exactly those decisions which they are *legally* (as opposed to morally) free to make. As duties of representation restrict the moral but not the legal freedom of decision-making, there is still room for a requirement of competence to apply to them even if they are under duties of representation. Representatives, then, are still the last ones who are in a position to ensure that authoritative political decisions are made competently, and to prevent incompetently made decisions from surfacing.

[70] Talking of what a possible competence testing procedure would test, Brennan (2011a, p. 715) remarks, "suppose the exam disqualifies some voters because they do not have a basic grasp of economics. Economic knowledge is relevant to almost any election, so there are good grounds for placing it on the exam." In another paper (Brennan 2014, p. 50), he clarifies: "Many political issues that involve economics go beyond the mere economics, and many issues don't involve economics at all. However, that said, it's clear that most issues in most major elections require economic knowledge."

There is independent intuitive support for assuming that the legal freedom, and not the moral freedom, of representatives triggers the competence requirement. The relevant intuitions show that limits on the legal freedom of representative mandates intuitively also limit the application of a competence requirement to their decisions. In order to see that, consider that voters may be subject to different requirements of competence when they exercise their right to vote in elections of representatives, on the one hand, or in certain referenda, on the other. While voters are not the ultimate agents making authoritative decisions in elections of representatives, they are the ultimate agents making authoritative decisions in referenda whose result is binding on the legislature.[71] However, in order to fulfill the requirement of competence, it is unnecessary to disenfranchise incompetent voters in referenda. Alternatively, the domain of decision-making may be restricted in referenda to a domain in which the average voter can reasonably be assumed to make competent decisions. Constitutional and statutory regulations in several jurisdictions restrict decision-making by referenda apparently for this reason (potentially among other reasons). For instance, in Hungary, a constitutional prohibition ensures that no question directly related to the design, amendment or revision of the central budget or the taxes levied by the legislature may be decided by a binding referendum—i.e., issues about which competent decision-making clearly requires a considerable substantive knowledge of economics.[72]

Now, the following question may arise. Why can a similar solution not be used in elections? Perhaps voters should not be allowed to decide even between party programs (or candidates based on their programs) if those contain issues that are not within voters' competence. In other words, analogously to referenda, instead of applying competence-based restrictions on

[71] You could object, at this point, that voters' decisions are also ultimate and authoritative in elections, regarding the appointment of representatives—and hence, voters are subject to a requirement of competence *in this respect*: they should competently choose between representatives, even if not between principles, policies or programs. For lack of space, I cannot take up this objection.
[72] See the Fundamental Law of Hungary, Article 8, Sec. (3) b).

the franchise, we should ensure the competence of political decision-making by restricting the domain of decision-making to those issues that voters can reasonably be assumed to decide in a competent manner. This could be achieved in different ways. For example, parties and candidates could be prohibited to include issues of taxation in their programs—voters cannot competently decide on these questions, so they should not be given an opportunity even to consider these issues when they make their decisions as to who to vote for. Alternatively, parties or candidates could be obliged to subject their programs to competent 'pre-screening', e.g., by independent experts. While these solutions may laudably increase the epistemic quality of voters' decisions, they should not be seen as solutions to the problem of fulfilling the requirement of competence, for there is no problem to solve. Voters need not be competent in issues on which they are not the ultimate decision-makers, as my reply to the next objection will show.

5.4.4. The Requirement of Competence and the Constant Amount Fallacy

You could object that my arguments so far have only shown that legislative representatives *do* have a duty of competent decision-making whenever they are legally free to make or refrain from making authoritative decisions. But, you may proceed, this is insufficient to show that voters do *not* have a duty of competent decision-making even if they are *not* the last agents in the chain of authoritative political decision-making. There is no constant amount of competence that is required in the entire process of decision-making, taken holistically, so that if representatives exhibit more of it, voters may exhibit that much less of it.

But this objection disregards that the requirement of competence is not a duty of maximization. Competent decision-making is not the aim of enfranchising voters or of allowing participation in political decision-making more generally, but a constraint on the decision-making process. No individual subject to the authority of a decision-making process

is wronged as long as no such decisions are made incompetently that assume authority. Therefore, if those in the chain of agents who issue the ultimate, binding decisions do so in a competent manner, no-one's right is violated even if previous agents in the chain of decision-making acted less competently.

You may still object, though, that the foregoing reply mistakenly assumes that decisions made in the last, authoritative stage of political decision-making may be sufficiently competent without any (or very minimal) competence exhibited at the previous stages of the process. Such a worry may be more adequate in contexts where an earlier decision constraints the possible substantial domain and procedure of decision-making at a later stage. For example, in liberal democracies, administrative agencies of the government may have considerable latitude in issuing authoritative decrees, but—typically—only within statutorily imposed constraints. If the constraints are set in such a way that disallows competent decision-making at a later stage—e.g., by setting up restrictive decision-making procedures which do not give sufficient time or allocate sufficient resources for competent decision-making—, then decisions at a previous stage decision may indeed undermine the competence of later-stage decisions.

In reply, two points should be considered. First, given the freedom of legislative mandates, no analogous concern arises with regard to electoral decisions potentially constraining the competence of legislative decisions. So, the concern outlined above, even if coherent, does not apply to the case in point. Second, for such a concern to arise, what matters is not the incompetence but the incorrectness of earlier decisions in allowing competent decision-making at a later stage in the decision-making process.[73] So, the concern is not even coherent

[73] Brennan (2011a) presents a different version of the argument put forth in this objection: representatives, he claims, are generally responsive to wishes of the electorate (pp. 707–708). Therefore, if voters make incompetent decisions, these decisions are more than likely to survive and be upheld in later stages of the legislative process, and are ultimately passed into law. However, the fact that representatives do not fulfill the duty of competence falling upon them does not entail that it is fair or morally desirable to pass on all this burden to voters

as it is outlined above. If it applies to a stage of decision-making, it is much more demanding than the requirement of competence. But this need not concern us here.

5.5. Conclusion

In this chapter, I have provided, first, a general methodological characterization of external justifications of competence-based restrictions on the franchise. Then, as a substantive argument, I have put forth what I believe is a fatal objection—the Authority Holism Objection—to a particularly influential external justification of competence-based disenfranchisement, Jason Brennan's Competence Argument. I have not argued against Brennan's assumption that there is a right not to be subject to incompetent authoritative decision-making, and a corresponding requirement that political authority be exercised in a competent manner. On the contrary: liberal-egalitarians may even find considerable appeal in this premise. What I have shown is merely that a state's duty to make decisions in a competent manner does not typically fall on the electorate in representative democracies.

Competence, I have argued, should be a requirement applying to the political decision-making process as a whole, in the first place, rather than a requirement applying to each and every stage of this process, or every single person contributing to the exercise of political authority. And once we distribute the duty to make competent decisions within the chain of the entire political decision-making process, in liberal democracies, we have good reasons to impose this burden onto the end of the chain further away from voters. So, if voters are incompetent, this is no such failure that could ground a restriction on any particular voter's franchise. Brennan's argument justifies no *all things considered* requirement to exclude anyone from the electorate—not even a *pro tanto* one—, contrary to its aims.

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themselves. Even in non-ideal cases, this may well not be a fair distribution of epistemic burdens, cf. e.g. Murphy (2000).

Finally, the arguments I have made in this chapter are not only relevant against some justifications of competence-based *disenfranchisement*. They are also relevant against some competence-based justifications of *unequal* voting rights and power. Thus, the findings of this chapter have repercussions for Part II—more specifically, Chapter 7—of this dissertation, where I justify equal voting power for those enfranchised. Although Chapter 7, unlike the present chapter, mostly focuses on the instrumental significance of the competent exercise of political authority—i.e., reliably making decisions that comply with the substantive requirements of equality—, the holism of the competence requirement and the internal division of epistemic labor within the political process are also relevant there, as we shall soon see.

PART II:

EQUAL ENFRANCHISEMENT ON AND ABOVE THE THRESHOLD

6. Equality Above the Threshold: Christiano's Account

6.0. Introduction

The irrelevance of the unequal competence of citizens, for the purpose of enfranchisement, comprises two distinct questions, as we have seen before. On the one hand, we must justify the equal *dis*enfranchisement of citizens below a certain competence threshold. On the other hand, we must also justify the equal *en*franchisement of voters at and above the same threshold. Part I—the previous chapters—focused on the previous problem that I referred to as non-scalar disenfranchisement. In Part II, which comprises rest of this thesis including the present chapter, I focus on the problem of equal—non-scalar— enfranchisement.

As a brief restatement, the problem of equal, non-scalar enfranchisement is the following. It is a matter of widespread agreement that citizens who are justified to have the vote do not have the same levels of voting-relevant competence. Competence may well have binary constituents that are either present or not in a given case: e.g., the capacity to make moral judgments is presumed to be of this kind (for discussion, see Chapter 2). But voting competence certainly has scalar, non-binary constituents too, which concern how *well* the relevant capacities are exercised. This is also true about moral capacities relevant to voting competence—the focus of the competence inequalities discussed in this chapter. The distribution of competence is thus scalar, continuous within the range where enfranchisement is justified. This raises the question: if voting is an exercise of political authority, and, *ceteris paribus*, political authority should be exercised in a competent manner, then how is this requirement reconcilable with an equal distribution of voting rights and power (including the

number and weight of votes) above the enfranchisement-threshold? Why are differences in competence irrelevant for the distribution of the franchise at or above the threshold (the Irrelevance Question)?[74]

In this chapter, I will reconstruct and criticize Thomas Christiano's (2008) account of political equality, which attempts to provide an influential answer to the Irrelevance Question. I will argue that Christiano's answer only justifies that equal voting power is *sufficient* to meet the relevant moral requirements that apply to the distribution of voting power—yet it fails to justify that equal voting power is *necessary* for that purpose. In other words, the account I critique in this chapter only justifies equal voting power as one disjunct of a disjunctive requirement. Consequently, the upshot of the argument is that the equal distribution of voting power is morally permitted, but not required, against the background of unequally distributed voting competence. This, however, is unsatisfactory. The right account of equal enfranchisement should also show that differences in competence *should* be treated as irrelevant for the purpose of distributing voting power among the enfranchised, and not only that they may be treated as such.

The account I am criticizing here consists of two parts: a negative and a positive one. The negative part—which I will refer to as the Anti-Tracking Argument—aims to establish a case against a distribution of voting power that tracks the distribution of voting-relevant competence in the electorate. This part of the account is purely negative in the sense that it

[74] In the following discussion, I will apply a slight simplification to the problem at hand. You could say that equal voting rights and equal voting power (which is the sum of the products of the number of votes one has multiplied by their relative weight) pose, strictly speaking, two different problems. We may have equal voting rights without equal voting power, or equal voting power with numerically unequal voting rights (both methods require unequally weighted votes). So, both the equality of rights and the equality of voting power require justification. However, in the coming chapters, I focus mostly on equal voting power. Once I justify why citizens should have equal voting power despite differences in voting competence, it will take a further step to justify why equal voting power should be distributed in numerically equal, equally weighted votes rather than numerically unequal votes whose overall power is equalized between persons by weighting their votes. Crucially, though, the way I frame the problem shows that in my view, equal voting power poses the more fundamental moral question. The equality of voting rights is merely a constraint—though a very important one—on how to distribute equal voting power.

concludes to a prohibition on one way of distributing voting power unequally—namely, by tracking unequal competence. It is the second, positive part of the account—the Argument from the Right to Judge—that provides a case for the strictly equal distribution of voting power within those justifiedly enfranchised. However, the criticisms I put forth undermine both the negative and the positive parts of the account, as I aim to show.

6.1. The Anti-Tracking Argument

6.1.1. Reconstructing the Argument

The Anti-Tracking Argument, the negative part of the case Christiano (2008, pp. 122–127) makes for equal voting power despite unequally distributed competence is essentially an argument from non-discrimination. It aims to establish that assigning different voting-power to voters who have diverging levels of competence is a prohibited form of discrimination. The thrust of the argument is the following idea: we cannot rank voters according to how competent they are in an adequate way; there is no such thing as a neutral competence-ranking. All competence-ranking is human, and as such, it is subject to the facts of judgment: cognitive bias, disagreement etc. So, whenever the state distributes voting power based on competence, it cannot but distribute it based on *someone's* judgment of others' (and her own) competence. And this objectionably and entirely ignores the interests of all who happen to have a different judgment of others' (and their own) competence.

The main apparent strength of Christiano's argument is that it tries to avoid interpreting what exactly an *equal* consideration of interests in distributing voting power would amount to. Instead, it is meant to show that the interests of those whose competence-judgments are on the losing side in any competence-ranking are not given *any* consideration. And this is a very obvious and public violation of the requirement of equal consideration of interests.

Let us see, then, the reconstruction of the Anti-Tracking Argument:

(P1) Any distribution of voting power which assigns any particular weight to the vote of someone judged more or less competent than others must rely on a competence-ranking of members of the electorate (henceforth: "competence-ranking").

(P2) Any competence-ranking reflects someone's judgment on the (relative) competence of herself and others.

(C1, from P1 and P2) Any distribution of voting power which assigns any particular weight to the vote of someone judged more or less competent than others reflects someone's judgment on the (relative) competence of herself and others.

(P3) There is disagreement about the right competence-ranking in all political communities.

(P4) If there is disagreement about the right competence-ranking, and the distribution of voting power reflects only some of these rankings, then the interest—in judging the competence of others (and themselves)—of those whose competence-ranking the distribution of votes does not reflect is not given any consideration.

(C2, from C1, P3 and P4) The relevant interest—in judging the competence of others (and themselves) —of those who disagree with the competence-ranking reflected by the distribution of voting power, is not given any consideration (let alone equal).

(P5) The distribution of voting power should be constrained by the equal consideration of interests of all.

(P6) If a citizen's interest in judging the competence of others (and herself) is not given (equal) consideration, the lack of (equal) consideration violates the requirement to give equal consideration to her interests.

(C, from C2, P5 and P6) The distribution of voting power should not rely on any competence-ranking.

I take the argument above to be valid. Accordingly, my criticism will focus on the truth of some of the premises.

6.1.2. The Salience of Outstanding Competence, and the Indirectness of the Argument

Let me start my critical discussion by calling attention to the contingency of the Anti-Tracking Argument. As (P3) asserts, the argument relies on the contingent, empirical assumption of widespread disagreement about how one's own and others' competence should be ranked within each political community. The root of the problem is not just that voters see themselves and fellow-voters as having different capacities. Crucially, they also evaluate the same capacities in different ways, since the relative weight of the constituents of moral competence relevant for voting are themselves disputed:

> […] the morally competent person must take many kinds of considerations into account. Abilities to judge each of these kinds of considerations well and balance them appropriately are somewhat independent. People can often be right about certain matters and seriously in error about others. In addition, moral competence usually refers to how well one approximates the truth in moral matters. Furthermore, the speed with which one is able to judge well, the nuance with which one judges, and the capacity to see particular circumstances in the right way are all relevant to the assessment of competence. Again all of these dimensions are somewhat independent of each other. And people rank them differently. This adds to the immense complexity of attempting to assess and compare overall moral competence. (Christiano 2008, p. 119)

The reason why all this is problematic is that there is no *saliently*, *publicly* right way to rank voters according to their competence. However, this raises two different concerns.

First, note that disagreement concerning competence-rankings can be more or less localized in the following sense. Competence-rankings, let us assume, set up an ordinal ranking of all members of the electorate according to voting-relevant competence. Disagreement about the right ranking may be less localized (more globalized): it may concern the entire ranking, from one end to the other. This need not mean that no single voter has the same place relative to any other voter in any two different rankings. But it does mean that relative positions are

disputed in roughly all ranges of the ranking. In contrast, disagreement about the right ranking may also be more localized. For example, voters may agree on who should occupy the bottom or the top positions, or at least there may be more agreement on who should get into the top 10^{th} percentile or the bottom 10^{th} percentile, even if their exact position within the percentile is heavily disputed.

Indeed, it seems very likely that—at least sufficiently informed—disagreement in most political communities is fairly localized, or at least most pronounced in the mid-range of the competence-distribution. Outliers are more salient on both ends of the scale. True, separate arguments for equal (non-scalar) disenfranchisement may remove the lower end of the competence scale (see Chapter 2 of the present thesis). This means that one range on the scale on which positions are subject to much less disagreement becomes irrelevant for further dispute, leaving the mid-range and the top-range of the scale as the subjects of practically relevant disagreement concerning the distribution of non-zero voting power. However, it is plausible to think that at least membership in the top 10^{th}, or—in the worst case—the top 100^{th} percentile is not debated at all. This is especially likely, even in very diverse societies, if some people perform outstandingly better than others not just in terms of *one* constituent element of voting competence, compensating for deficiencies in others, but in terms of *all* constituents. Hence, if the competence of even a vanishing minority of voters is considered outstanding beyond disagreement, the Anti-Tracking Argument seems unable to justify a prohibition on plural voting.

But why should we care about the potentially saliently, publicly higher competence of the top 10^{th} or 100^{th} percentile? What good would providing them with more voting power do (whether in the form of more votes or the same number of votes with more weight)? After all, the difference in competence between the less-than-minimally competent and the mid-range may be significant for the distribution of voting power in a different way than the difference

in competence between the mid-range and the top-range. The lowest end of the scale, Christiano argues, as we saw in Chapter 2, has no competence that would ground the relevant interest to be considered and advanced on an equal footage with others. The top end, in sharp contrast, undoubtedly does have judgment-based interests, grounded in the relevant constituents of competence. Still, this should not preclude unequal, competence-tracking distributions above the minimal competence threshold, for the following reason. I understand Christiano's account to be a broadly epistemic proceduralist, instrumentalist one: *ceteris paribus*, it gives preference to institutions and procedures that help find the right way to substantively realize equality.[75] So, it is also the equal advancement of *others*' interests—i.e., of those who belong to the mid-range of the competence-scale—as well as anyone else's that seems to ground a *pro tanto* reason for assigning more voting power to the top range. And it is the public salience of the outstanding competence level of the top-range that seems to remove the prohibition on assigning them more voting power than to members of the mid-range.

Therefore, the Anti-Tracking Argument is very likely to face an extensional problem. It shows why the distribution of voting power should not track the distribution of competence in the mid-range of the competence scale. But it is unlikely to justify the same prohibition regarding the top-range of the competence-scale.

Second—and this also supports the epistemic proceduralist reading of Christiano's theory—the only concern with competence-proportionate voting power, according to the Anti-Tracking Argument, is a second-order concern. Were the electorate to agree on a competence-ranking, the argument does *not* show that there would be anything objectionable about a competence-tracking distribution of voting power. The indirectness of the case against competence-tracking seems somewhat counterintuitive: intuitively, voters have a more direct

[75] This is also clear in (Christiano 2015), where he asserts: "the function of political decision-making is to advance the common good and justice among persons" (p. 239; see also ibid., p. 247).

interest in equal voting power, and the moral constraint on epistemically advantageous distributions should (also) give an account of this very interest. While this methodological desideratum is far from fatal to the Anti-Tracking Argument—it does not even question the soundness of the argument—, it does raise the suspicion that even if the argument is sound, it fails to capture the full moral significance of the prohibition on tracking.

6.1.3. Not All Ranking Procedures Favor Someone and Ignore Others

More importantly, I want to argue below that (P4) of the Anti-Tracking Argument is false. In circumstances of disagreement about the right competence-ranking, it is *not* necessary that any ranking we adopt for the purposes of distributing voting power, gives no consideration to the interest—in judging the competence of others (and themselves)—of those whose competence ranking is not tracked by voting power. In fact, Christiano himself cursorily discusses a counterexample: a procedure which does consider everyone's interests equally in distributing voting power in accordance with varying competence. This procedure is, quite simply, averaging (Christiano 2008, p. 126). It proceeds as follows. Take the average position of each voter in the competence-rankings of all voters, and repeat the procedure for all voters. The result is a competence-ranking, but one that equally reflects the competence rankings of all enfranchised citizens. They each have an equal say in determining the result. Now voting power gets distributed, tracking the competence ranking that resulted from the averaging procedure. I will refer to this procedure as the "Averaging Procedure." If this method gives equal consideration to the interests of all voters, and it provides a publicly justifiable way of doing so, then the Anti-Tracking Argument actually allows for the distribution of voting power according to some competence-ranking—just not any kind—, and it may not prohibit all competence-based inequalities.

Several objections may be raised against the averaging procedure described above—and indeed, Christiano presents two of them too. In the remainder of this subsection, I will refute both of the actually raised and two of the most important potential objections, hopefully establishing a strong case for averaging. Remember, however, that the methodological reason for this defense is *not,* ultimately, to establish support for the Averaging Procedure as the correct way of distributing voting power in line with equality and publicity. Instead, I aim to show that if the Averaging Procedure is consistent with these requirements, then the Anti-Tracking Argument cannot justify the equal distribution of voting power among the enfranchised. So, we will have to find a different justification.

A. The Question-Begging / Inconsistency Dilemma. You may object that the Averaging Procedure is not a viable alternative to the equal distribution of voting power because it is either question-begging or it results in inconsistencies. Take the following dilemma. The Averaging Procedure either does or does not presuppose that participants who give their input to the Averaging Procedure have equal competence in judging others' and their own competence. If it does *not* presume equal initial competence, then the argument is entirely question-begging. Why would we have any reason to leave it to voters to take an *equal* vote on who gets how much voting power based on their competence? If we do presume equal initial competence, though, then the argument results in inconsistent competence-rankings. Before the Averaging Procedure takes place, we assume equal competence—and we give up that assumption once the Procedure has been concluded. But then why should the result, based on the already defeated presumption of equal competence, be binding at all? If the Averaging Procedure lands us with an unequal competence-ranking, then we have no reason to respect it. Because of its inconsistency, the Averaging Procedure is self-defeating.

However, neither horn of the dilemma is as devastating as it may look. Let us take the allegedly Question-Begging horn first. This horn of the objection rightly assumes, of course,

that there must be a reason for the equal weight we assign to competence-rankings at the beginning of the Averaging Procedure. But all I need to show here is that this horn of the objection is no more devastating to the Averaging Procedure than to Christiano's Anti-Tracking argument for the equal distribution of voting power. After all, the Anti-Tracking Argument claims not to presume any particular distribution of competence, but only requirements of equality and publicity which prohibit reliance on any particular competence ranking while ignoring others. If this claim is false, then the Anti-Tracking Argument is unsound for independent reasons, and my present critique is pre-empted. But if it is true, then the question-begging objection has no teeth against the Averaging Procedure either—since the latter relies on the same reason: equal consideration of interests (P5). In other words, the Averaging Procedure takes into account everyone's competence ranking equally because this is a way to respond to everyone's interest in judging of their own and others' competence; and the equal weight in the averaging ensures that this is not merely an inclusive, but an equal consideration of interests in judgment.

What about the Inconsistency Horn? The force of the objection on this horn of the dilemma seems much greater. The Anti-Tracking Argument only relies on *one* competence-ranking *at most*—but it actually relies on and delivers *none* on its fairest reading. The Averaging Procedure, by contrast, necessarily takes a set of competence rankings as its input, and delivers a competence-ranking at its output. The output of the Procedure really seems to be in tension with the way the input was generated. So, once it turns out that we should treat people *as if* they were as competent as the output ranking considers them to be, we should repeat the procedure, and have people vote on each others' competence, but now with their votes weighted according to the previous competence-vote. And so and so forth, *ad infinitum*.

Still, the objection from Inconsistency is unsound. If the Averaging Procedure relies on any competence-ranking at all as its input, it must be a kind of third-order competence-ranking.

First-order competence concerns judging policies—it is the competence relevant to evaluate representatives and candidates. Second-order competence concerns voters' judgment on representatives and candidates, according to the first-order competence of the latter. Third-order competence, finally, concerns judging citizens' judgment on voters, according to the second-order competence of the latter. So, if the Averaging Procedure has to rely on any competence-ranking, this ranking concerns a third-order competence to judge others' (and their own) competence (viz., as voters) to judge others' (and their own) competence (viz., as representatives) in choosing the right policies. In contrast, the output ranking of the Averaging Procedure is a second-order competence ranking—relevant in representative democracies—which concerns others' (and their own) competence in voting for the right candidates in elections. This opens up logical space for distinguishing two kinds of competence: one is the input, the other one is the output of the Averaging Procedure.

Logical space, of course, is not enough: the infinite regress can only be stopped if we assume that the third and second order competences are in fact distinct, not only analytically, but also substantively. This indeed seems to be the case, at least in larger, modern polities. Third-order competence is a matter of skillfully collecting, processing and using information about other voters—information that is always very scarce, allows for making only collectivistic, generalizing judgments. (E.g., 'Those with a background in Austrian economics tend to ignore debates about minimal wages in modern economics at all, and hence evaluate leftist candidates' program very rigidly'; 'Those who live in urban centers are less good at judging character' etc.). In contrast, second-order competence is a matter of skillfully collecting, processing and using information about particular candidates—information that is typically abundant, focused on particular persons, but is also often contradictory, and accordingly allows for making highly individualized judgments. (E.g., 'Donald Trump is not very responsive to empirical evidence of any kind, evaluated consensually by the scientific

community', or 'Bernie Sanders may look like an inept negotiator due to his extreme views, but his moral compass is impeccable' etc. etc.) In other words, passing this second-order competence judgment is a rather different challenge than passing third-order judgments. Therefore, no inconsistency flaws the Procedure, since there is nothing that would strictly compel us to revise our initial judgment about the distribution of third-order competence, based on the ranking of second-order competence that is the outcome of the Averaging Procedure. This means that accepting the second horn of the dilemma above does not land us with an inconsistent procedure.

B. Incoherence with Epistemic Instrumentalist Aims. Revising the Inconsistency Horn of the previous, dilemmatic objection, you may hold that the Averaging Procedure is not inconsistent, but it is at least incoherent. The very reason why competence-rankings should be taken into consideration must be motivated by some sort of epistemic proceduralist. Such motivation lacking, what would count in favor of distributing voting power according to competence in a theory of democratic participatory rights?[76] Christiano clearly identifies with instrumentalist motivations in support of a *pro tanto* case for the competence-based distribution of voting power. He writes,

> Intuitively, since individual voters have a share of power over the lives of others and must make morally significant decisions regarding how social life is to be organized, they are in a position to do morally significant harm to others by, say, enacting unjust laws or unduly restricting liberty. As a rule the less competent are more likely than the more competent to do harm. This reasoning seems to make all gradations of moral competence relevant and suggests that requiring a minimum of competence for the possession of power and making power proportional to competence are in part based on the same idea. (Christiano 2008, p. 117)

[76] Of course, other motivations are possible. See, for instance, John Stuart Mill's (1991) motivation for plural voting: it was rather a way to resist the overwhelming channeling of uneducated, working class interests into democratic decision-making.

Not only is the avoidance of harm an appropriate epistemic goal for political institutions, but so is the equal advancement of interests. Christiano's very starting point is the recognition that while the latter must be the aim political institutions serve, the facts of judgment guarantee that there is a lot of disagreement about what exact moral principles constitute this aim, or how they should be realized. But these insights are also well-placed to fuel an epistemic instrumentalist ambition: we should strive, *ceteris paribus*, to establish and maintain political institutions which optimally serve us to find what the equal advancement of interests requires us to do (or at least, institutions which serve that aim better than relevant alternatives). As I will show in Chapter 7, this requirement need not and should not immediately translate into a requirement that voting power be distributed in any way in accordance with competence. Yet it provides a strong presumption in favor of epistemically (more) powerful institutions. And this, I believe, is what motivates the structure of the Anti-Tracking Argument, which takes it for granted that differences in competences should, *ceteris paribus*, be reflected in the distribution of the vote. That is why we need the Anti-Tracking Argument itself, which aims to block this requirement.

Given the epistemic instrumentalist motivation behind a competence-tracking distribution of voting-power, the following question arises: Does the Averaging Procedure not *counteract* the epistemic instrumentalist aims of democracy *more* than the equal distribution of votes does? This question is highly relevant, since apart from this instrumentalist consideration, nothing seems to count in favor of a competence-tracking distribution of voting power anyways. So, if what we get at the end of the Averaging Procedure is a distribution of voting power with *lower* epistemic potentials than an equal distribution, this may be sufficient reason in itself to prefer the equal distribution as the superior way of realizing the publicly equal advancement of interests. Perhaps the Averaging Procedure and the equal distribution of voting power are both individually sufficient to satisfy equality and publicity as far as non-instrumental

properties of the political procedure are considered, other things being equal—but other things are not equal, or so the objection argue. If public equality could be realized in an alternative way than what the Anti-Tracking Argument suggests, but only with a lower epistemic potential, we would have sufficient reasons to reject the alternative procedure. So, public equality and epistemic proceduralist consideration would jointly provide sufficient reasons to choose the equal distribution of voting power, as the Anti-Tracking Argument suggests, over the Averaging Procedure.

In order to assess the strength of the objection, from an epistemic instrumentalist perspective, three alternatives are the subject of relevant comparison:

(a) Voting power distributed by tracking the real competence ranking of voters;

(b) Voting power distributed by tracking the competence ranking that results from the Averaging Procedure;

(c) Voting power distributed equally.

Option (a) would obviously be the best from a purely epistemic instrumentalist viewpoint, but it is infeasible. Unfortunately, due to the facts of judgment, we have no epistemic access to the real competence-ranking of voters (see Christiano 2005 on our lack of a "divine standpoint" on this matter). So, the question is, would (b) or (c) suit better the relevant epistemic aims, other things being equal? I emphasize that the question only arises if other things really *are* equal. Notably, if the constraints of equal advancement of interests and publicity are met by both options. Yet I already argued above that they do.

The answer to the question above depends on certain contextual features. In non-ideal circumstances where voters are terribly misinformed and/or misled by politicians and are fraught with e.g. racial prejudices, they may also be extremely misinformed about others' (and their own) relative competence. So, using voters' competence-rankings would very likely lead to epistemic distortions, whereas refraining from using their rankings as an input into the

distribution of voting power would at least result in a distribution that is free of these distortions. In more ideal circumstances, where voters' competence rankings are a result of sufficient information, these rankings are free of at least those biases which go beyond the mere facts of judgment. And, we assume, the facts of judgment affect all voters roughly equally.[77] But then it is hard to see how individual assessments of competence would be so wildly off the mark that their use would actually result in distributing more voting power to the less competent—especially in comparison with the equal distribution of voting power. After all, even regular IQ tests do nothing else but reflect (and are validated by reflecting) the collective competence-ranking of some individuals by others. But we do not assume they are irrelevant or distortive of a realistic assessment of individuals' *real* competence. We have no alternative to assess competence than to rely on individual competence-rankings (either directly or indirectly by designing procedures which reflect them), and differences in competence within the electorate are relevant to the overall epistemic potential of democratic institutions. So, option (b) may well be superior, but certainly not inferior, to option (c) at least in ideal circumstances, as far as epistemic instrumentalist considerations go. Therefore, *in ideal circumstances*, the Averaging Procedure is not incoherent with the epistemic instrumentalist aims of democratic institutions that are coherent with Christiano's Anti-Tracking Argument.

C. Instability. Another objection, actually raised by Christiano (2008, p. 126, n. 30), calls into question the very stability of the Averaging Procedure:

> If I claim to be more competent than you are then it is not clear how I can be willing to compromise as an equal with your claim to be more competent than I am. Once we permit people to claim a greater share of power on the grounds of greater competence the dispute will rise to the second order very quickly. If we reject using competence rankings at the second order, as I have just shown we must, then we

[77] Note that if facts of judgment did applied to voters roughly equally, and this inequality could be publicly shown, this would be a (*pro tanto*) reason in itself for the unequal distribution of the vote.

> should reject individuals' use of competence rankings at the first order. But this entails that individuals will be in agreement over what they demand and thus no compromise will be necessary. (Christiano 2008, p. 126, n. 30)

It is worth clarifying what "stability" might mean here, in order to give a fair assessment of the objection. First, it may mean logical consistency: in this case, my reply to the first objection from inconsistency applies here. Second, it may mean motivational or psychological infeasibility. (The use of the word "willing" certainly supports this interpretation.) This should not be taken lightly either: liberal political institutions are supposed to sustain sufficient motivation to accept them as binding—at least in ideal theory.[78] Yet in ideal theory, there is common knowledge about the facts of judgment: I know that the facts of judgment apply to me as much as to others, and that the facts of judgment also concerns judgments of competence. Then it seems entirely coherent to think that even if I see myself as more competent than others, I have reason to accept a procedural solution to disagreements about competence which equally considers my ranking judgments and yours, although the latter ranks me lower than I would rank myself. What triggered the need for a second-order solution is, again, is the very need for a procedure which respects equality and publicity. Furthermore, more generally, I may be willing to accept a compromise in all kinds of cases, even if I think it does *not* do full justice to my viewpoint, once I acknowledge that I have no good reasons to compel others to accept my judgment, but I have good reasons to compel them (and have myself compelled) to accept a compromise. So, the objection from instability against the Averaging Procedure fails too.

[78] As Rawls (1999) puts it, "a society regulated by a public sense of justice is inherently stable: other things equal, the forces making for stability increase (up to some limit) as time passes" (p. 437).

D. No Checkerboard Solutions. A final objection against the Averaging Procedure that I want to consider is also raised by Christiano:

> the results of the compromise procedure never satisfy any of the participants since the results must always be a compromise with others. If the hypothetical compromise procedure is used to compromise between different conceptions of substantive justice, the resulting conception of justice will be more mixed up and in many cases less attractive to the participants than their opponents' starting points. The scheme will seem no more responsive than one not based on the compromise procedure. (Christiano 2008, p. 126, n. 30)

This is, in fact, the objection Ronald Dworkin raises against so-called checkerboard laws (Dworkin 1986, pp. 178–184; 217–218):

> Do the people of North Dakota disagree whether justice requires compensation for product defects that manufacturers could not have reasonably prevented? Then why should their legislature not impose this "strict" liability on manufacturers of automobiles but not on manufacturers of washing machines? […] Most of us, I think, would be dismayed by such "checkerboard" laws that treat similar accidents […] differently on arbitrary grounds. […] we reject a division between parties of opinion when matters of principle are at stake. We follow a different model: that each point of view must be allowed a voice in the process of deliberation, but that the collective decision must nevertheless aim to settle on some coherent principle whose influence then extends to the natural limits of authority. If there must be compromise because people are divided about justice, then the compromise must be external, not internal; it must be compromise about which scheme of justice to adopt rather than a compromised scheme of justice. (ibid., pp. 178–179)

What explains the apparent analogy between judgments of justice and judgments of competence, as an alleged prohibition on checkerboard solutions apply to them? Checkerboard solutions are regulations which result from a fair compromise of reasoned positions, yet they are themselves not necessarily justified by any reasons in substantive terms, on their merit. They are purely procedural settlements of principled disagreement. Dworkin's underlying concern with checkerboard solutions seems to be exactly this: a liberal

state's actions (and omissions) must be justifiable on the merits by coherent moral judgments. This makes the analogy clear with the Averaging Procedure. The Averaging Procedure takes as its input voters' competence rankings, and delivers as its output a compromise between these rankings. But the rankings are no mere preferences: they are judgments, considered to be true by their proponents. Moreover, they are also *reasoned* judgments, not self-standing claims: they depend, at least in part, on the different epistemic convictions voters hold, just as moral judgments depend, in part, on the moral convictions their proponents hold. The distribution of voting power should be based, following the Dworkinian analogy, on coherent epistemological principles, and not just a compromise of these principles.

The resistance to checkerboard solutions is independent from epistemic instrumentalist considerations. One the one hand, Dworkin considers the principle of integrity—essentially, the prohibition on checkerboard solutions—as a fundamental, irreducible liberal principle. There may be some intuitive support for it, although, I believe the intuition is strongest where it tracks regulations that are not only in breach of integrity, but are also at once unduly discriminative. On the other hand, Christiano has even more reason to offer in favor of the principle. Citizens have an interest in judgment: i.e., in their reasoned judgments being taken seriously. Distributions of voting power resulting from the Averaging Procedure may appear to violate this requirement. The procedure, you may argue, is not responsive to anyone's judgment, properly speaking, and hence considers no-one's interests in judgments. Why is that so? True, of course, that the Averaging Procedure takes as its input every voters' judgment. Yet responsiveness to their interests requires more than this—or so Christiano may argue. In effect, checkerboard solutions are special cases of leveling-down: they achieve public equality by not giving due consideration to anyone's interests. On this interpretation, the Averaging Procedure is akin to a bubblegum dispensing machine which takes moral judgments as its input, and—say—delivers red bubble gums as its output in response to judgments starting

with a consonant, and blue gums in response to judgments starting with a vowel. In other words, the Procedure is irresponsive to the *reasons* supporting the judgment—which would be a necessary condition to be responsive to judgments *qua* judgments, and thus to advance someone's interest in judgment at all.

However, equal consideration of an interest in judgment cannot mean that compromise, in general, is ruled out from legislation or political institutional design. There are at least two kinds of reasons for this: one more general, and one more specific to the Averaging Procedure. First, compromises in legislation are an inevitable aspect of democratic government, generally speaking. Especially in parliamentary democracies where the voting system encourages coalition governments (or makes them the only available options), 'unprincipled' compromises are a necessary feature of legislation. Such compromises may take weaker or stronger forms. Weaker compromises include the happier cases of log-rolling: representatives of Party A vote in a certain way or abstain on an issue neutral to them, thus helping Party B's advance its own program; in return, representatives of Party B vote in a certain way or abstain on another issue neutral to them, thus helping Party A's advance its own program. It may be the case that even such votes are unprincipled compromises in the sense that, upon reflection, they do not in fact normatively cohere with the principles that underlie the compromising party's program. These compromises are weaker only because they do not concern issues that the compromising party explicitly endorses, or that it sees as incoherent with their principles (even if that is, in fact, the case). But stronger cases of compromise are abundant too in democracies: representatives of Party A vote in a certain way or abstain on an issue *against their conviction*, thus helping Party B's advance its own program; in return, representatives of Party B vote in a certain way or abstain on another issue *against their conviction*, thus helping Party A's advance its own program. Coalition between parties with genuinely distinct programs almost always necessitates stronger compromises:

representatives must choose which parts of their programs are the most important ones, and try their best to advance those, while suspending (or even counteracting) the pursuit of others. In other words, checkerboard solutions abound in at least some kinds of democracies. But the principle of integrity rules out such compromises—and this I take to be its *reductio*. One's interest in judgment cannot ground a right for uncompromised political decisions.

However, in case you do not accept the more general critique of the principle of integrity above, there is a more specific reason why anti-checkerboard considerations should not avert our attention from the Averaging Procedure. This reason relies on a disanalogy between Dworkin's and Christiano's respective targets in their anti-checkerboard arguments.

While Dworkin objects to checkerboard solutions where the decision-making procedure concerns moral judgments, Christiano objects to checkerboard solutions here as they concern *epistemic* judgments. It is true, of course, that both moral and epistemic judgments can be reasoned, and an interest in the equal consideration of citizens' judgments is grounded exactly in the reasoned nature of judgments. Yet the interest we have in our epistemic judgments is different from the interest we have in moral judgments. And the relevant difference, I believe, also requires different standards of "consideration" for these different interests. Moral judgments in politics are first-order judgments about the principles that states should adhere to. If state action cannot be backed up by coherent moral judgments, it is very unclear in what way states can pursue justice, rather than a mere aggregate of preferences; it may also be unclear why they should be allowed to distribute entitlements or obligations discriminatively, without due (principled) justification for the compromises made (see Dworkin's original example above). Both Dworkin (1986, pp. 187–189) and Christiano (2015, p. 238) may also worry that if legislation does not pursue coherent aims chosen by voters, collective self-government may suffer.

Epistemic judgments concerning competence are, in contrast, second-order judgments about who are more competent to make moral judgments in politics. Assuming that checkerboard-solutions are wrong when it comes to first-order moral judgments—as they make principled state action impossible—it does *not* follow from this that checkerboard-solutions are wrong when it comes to second-order epistemic judgments about voting-relevant moral competence. Neither is it true that the distribution of voting power—an instance of state action itself—is unprincipled: it complies with moral requirements grounded in equality and publicity. So, even if you find the principle of integrity compelling, morally coherent state action is still possible despite that it relies on a compromise of principled epistemic judgments.

In summary, I have shown, against several objections, that the Averaging Procedure is a defensible alternative to equal voting power, as a way of complying with equality and publicity. To repeat: I do *not* intend this to be a defense of the Averaging Procedure. Instead, I conclude from the discussion above that if the Procedure can meet the same moral requirements are equal voting power, we need further—or different—arguments which show that equal voting power is a (non-disjunctive) moral requirement. Christiano's other, positive argument for equal voting power, which I will scrutinize below, may still serve this purpose. However, as I hope to show, that argument fails for a different reason, still leaving us without a satisfactory defense of equal voting power of all enfranchised as a moral requirement or even right.

6.2. The Positive Argument for the Equal Distribution of Voting Power

6.2.1. Reconstructing the Argument

While the Anti-Tracking Argument does not succeed in showing why we should refrain from distributing voting power according to competence, by means of the Averaging Procedure, for instance, an alternative argument may serve to directly justify why everyone's competence

ranking can *only* be given equal consideration if voting power is equally distributed. Christiano attempts to provide such an argument, and I will refer to it as the Positive Argument. In this section, I reconstruct the argument and will show that much like the Anti-Tracking Argument, it fails to provide a defense of equal voting power in the face of unequally distributed competence.

The Positive Argument proceeds in two steps. The first step is meant to justify an equal right to judge others' and one's own competence. The second step aims to justify, given such an equal right to judgment, the requirement to distribute voting power equally. Let us see the Argument itself (Christiano 2008, pp. 127–128):

Step 1: Equal right to judge for oneself others' and one's own competence

(P1) Publicity and equality should be respected.

(P2) Publicity and equality can only be respected if no-one's competence-ranking is collectively endorsed.

(C1, from P1 and P2) No-one's competence-ranking should be collectively endorsed.

(P3) If any competence-ranking is used as an input into the procedure which distributes or weighs votes, then that competence-ranking is collectively endorsed.

(C2, from C1 and P3) No competence-ranking should be used as an input into the procedure which distributes or weighs votes.

(P4) If no competence-ranking should be used as an input into the procedure which distributes or weighs votes, then we fall back to the "default position".

(P5) The default position, given the facts of judgment, is that everyone has the right to judge the competence of others (and themselves).

(C3, from C2, P4 and P5) Citizens have an equal right to judge the competence of others (and themselves).

Step 2: From equal right to judgment to equal right to vote

(P6) Citizens' equal right to judge the competence of others (and themselves) in political life entails a right to make these judgments effective.

(C4, from C3 and P6) Citizens have a right to make their judgments about the competence of others (and themselves) in political life effective.

(P7) Citizens can only make their judgments about the competence of others (and themselves) in political life effective through the exercise of political participatory rights, especially the franchise.

(C5, from C4 and P7) Citizens have a right to exercise political participatory rights, especially the franchise.

(P8) Equality and publicity require that the distribution of political participatory rights corresponds to the distribution of the right to judge the competence of others and oneself in political life.

(C from C5 and P8) Equality and publicity require an equal distribution of political participatory rights (regardless of differences in competence).

It is crucial to the argument what the right to judge the competence of others and oneself entails. The entire argument, after all, turns on what the content of this right is. In the following, I hope to show that once we try to settle the content of this rights, we face a dilemma that is fatal to the Positive Argument as a justification of equal voting power.

6.2.2. The Right-to-Judge Dilemma

Regarding the content of the right to judge for oneself, (P7) makes it clear that it does entail a right to political participation in procedures which takes one's competence-ranking as their input. In other words, it entails the right to judge the competence of candidates, and vote for or against them on the basis of that judgment. But quite plausibly, the right to judge for oneself does *not* entail a right to participate in political decision-making as a representative, based on one's competence-ranking. Even if I thought I had superior competence compared to anyone else in the political community, my competence ranking, given a right to judge others' and my own competence, would not entitle me to occupy a political office. Whether I can get a particular office as a representative based on my competence will be decided together with *others, on equal terms.* Others have competence rankings too, and whether I am found

competent enough to be a representative by the community depends on the competence-rankings of all voters.[79] Now, this raises the following question. If my right to judge does not entail the right to use that judgment in making political decisions regardless of what *others* think of my competence, why is the same not true about the distribution of voting power?

We face a dilemma here regarding the content of the right to judge. The right includes either too little or too much. On the first horn, it includes too little: it does not include an entitlement to participate in politics based on one's own competence-ranking, unless that ranking is balanced against other citizens' similar rankings in an aggregative procedure. This would justify why voters have *no* right to occupy public offices unless elected by others (and themselves, as part of the community) for that purpose. But at the same time, this interpretation of the right to judge for oneself leaves it a mystery why voters should have equal voting power despite that others disagree about voters' respective (relative) competence levels.

On the second horn of the dilemma the right to judge entails the right to participate in political decisions regardless of others' judgments of competence. If so, the right to judge justifies equal voting power: I have an equal right to participate in political decision-making through voting, even if others find that they are substantially more competent voters than I am. But it does not seem to explain why we have no right to be representatives (as opposed to merely candidates) despite others' judgment that we are much less competent than others to occupy a representative mandate.

The second horn, unfortunately, seems unattractive for at least two reasons. First: it is self-undermining. If everyone has a right to serve as a representative, regardless of their perceived

[79] This, of course, differs from the Averaging Procedure: representatives are typically chosen by the plurality / majority. This difference seems irrelevant here, though—and the difference is also more difficult to put a finger on depending on the voting systems used. Preferential voting (also known as alternative vote or ranked choice voting) ranks multiple candidates in a way very similar to the Averaging Procedure.

competence, then voters lose their power-right to determine who will serve as representatives. So, voters cannot vote, based on their own competence ranking, for representatives. And the right to judge is thereby infringed. Second: an equal right to judge, thus construed, requires direct democracy (a plebiscite) instead of representative democracy.[80] I consider this a *reductio*: there are several reasons why representative democracy should be preferred as a superior institutional realization of equality (see, e.g., Christiano 1996, pp. 215ff; Landemore 2013, pp. 105–108; Kis 2009, pp. 580–583; cf. also Stone 2016). We should not accept such a reason that justifies equal voting power despite inequality in competence, but at once rules out representative democracy.

The dilemma does not merely undermines the positive case for equal voting power. It also points to a significant desideratum. This desideratum requires that equal voting power *not* be justified relying on disagreement about competence-rankings—since that will impale us on the fork of the Right-to-Judge Dilemma. Any alternative positive account for equal voting power, including the one I will offer in the next chapter, must comply with this desideratum. I will meet this requirement by offering an account that shows we have no reason at all to distribute voting power in accordance with the distribution of voting competence—and hence, disagreement about competence is irrelevant to this alternative theory.

6.2.3. An Objection to the Right-to-Judge Dilemma

You may try to show that the Right-to-Judge Dilemma does not stand up to scrutiny by pointing out that judging the competence of voters, as opposed to judging the competence of representatives, involves very different kinds of judgment. Voting for representatives engages your judgment about others' and your own competence (should you turn out to be one of the

[80] One might think a potential alternative is the sortition or lottery of representatives. But just as much as an enfranchisement lottery (see López-Guerra 2011; 2014, Ch. 2, pp. 27–28; cf. Saunders 2008, 2010) does not satisfy the requirement of the equal consideration of citizens' interest in judgment, a representation lottery would not respect the (equal, but also positive) right to judge.

candidates) in judging on the merits of a political decision (second-order competence). Voting on the competence of other voters, by contrast, engages your judgment about others' and your own competence *in judging others' and your competence* in judging on the merits of a political decision (third-order competence). So, you could object, the Right-to-Judge Dilemma fails to distinguish between these two. The Positive Argument only concerns your right to judge second-order competence, but not any alleged right to judge third-order competence.

This, of course, is a logically possible content of the right to judge. But in Christiano's account, restricting the right to this content is unmotivated, and would consequently appear *ad hoc*. The thrust of the argument is the idea that your right to make a judgment on others' moral competence *blocks* others' claims to reduce your relative opportunity to exert political influence on account of your own lower perceived moral competence. Moral competence judgments are engaged, of course, in judging others both as competent voters and as competent representatives. Therefore, if your right to judge entails immunity against others' moral competence judgments, this must entail your right to serve as a representative: after all, your right to judge others' and your own competence blocks their claims to reduce your relative opportunity to exert political influence on account of your own lower perceived moral competence.

6.3. Conclusion

In this chapter, I have reconstructed and criticized Thomas Christiano's arguments for the equal distribution of voting power above the enfranchisement-threshold of minimal competence, despite the unequal distribution of competence above that threshold. My critique addresses both Christiano's negative and positive arguments made for this case.

The Anti-Tracking Argument, which is the negative one, aims to establish that unequal voting power would be irresponsive to voters' interest in judgment, and therefore, would violate the

requirement of the equal consideration of interests. In response to this arguments, I have shown that there is at least one counterexample to the general conclusion it aims to establish: namely, the Averaging Procedure does take everyone's interest in judgment into due (and equal) consideration. I have also defended the Averaging Procedure against two potential and two actually raised objections. Given that it is sufficient (though unnecessary) to comply with equal consideration of interests in judgment (in political participation) in a public way, it undermines the conclusion of the Anti-Tracking Argument that equal voting power is necessary to comply with the same requirement.

The Positive Argument aims to establish a more direct case for equal voting power, deriving the conclusion from the fact of disagreement about competence rankings, and the interest in giving political effect to one's judgment about other's and one's own competence. But, as I argued, the argument is not sufficiently direct. Since it relies on giving effect to one's competence ranking in politics, it is unable to explain the asymmetry between equal voting power, regardless of anyone's competence rankings, and competence-influenced chances to become a representative, given all voters' competence rankings (as expressed in their votes).

The upshot of this discussion is that we need to look for an alternative account of equal voting power against a background of unequal voting competence. This alternative account should refrain from relying on disagreement about competence rankings among voters. Further, it must show why equal voting power is not merely one of the ways to meet specific moral requirements, but the only way to do so.

7. Equality Above the Threshold: An Institutional Account

7.0. Introduction

What makes the equality of the votes and voting power a requirement among voters whose competence is above the minimum threshold, but still varies significantly? I have criticized two arguments in the previous chapter that provide replies to this question. In this chapter, I put forward my own reply.

First, I discuss the argumentative strategy to show that requirements of political equality are constraints on the pursuit of other values. I argue that this approach is much more convincing and easier to pursue if those other values are independent from the pursuit of equality more generally. But if they are not, the approach loses much of its intuitive support. Competent rule matters, after all, also as it is instrumental to the realization of the substantive requirements of equality. We have good epistemic proceduralist reasons to favor more competent rule to less competent rule. So, I argue, the right question to ask is not so much whether political equality and equal voting power can be compromised for the sake of better substantive outcomes, but rather whether the latter are compromised by equal voting power at all.

Second, I show, partly relying on previous arguments against Brennan's views, that there is no need to compromise substantive equality for the sake of political equality. While Brennan bases his account on a non-instrumental requirement of competence, some of the consideration I raised earlier against his account hold here too. I establish that given the institutional background of a liberal democracy, including representative law-making and constitutional review, a political decision-making process that involves equal franchise and equal voting power can protect substantive equality just as well as one which involves a competence-tracking distribution of the franchise or voting power. So, given the lack of any conflict between the procedural requirements of political equality and substantive equality, we

need not even settle if political equality is a constraint. Perhaps it is, but that has no practical relevance in a liberal democracy—which is the kind of democracy we should have anyways, as it realizes the various requirements of moral equality more fully than its alternatives.

Finally, I defend and qualify my account against three objections. Against the first one, I show that although it may seem I have only argue for a weak permission for equal voting power, this is wrong—popular sovereignty as political equality grounds a very strong *pro tanto* requirement to that effect, and the upshot of this chapter is that it is also an *all things considered* requirement. In reply to the second objection, I acknowledge that temporary restrictions on equal voting power may be permitted in historically exceptional cases, in democratic transitions, provided such restrictions are strictly necessary to protect equality. Against the last objection, I clarify that the—quite undeniable—existence of liberal democracies with more and less competent electorates does not undermine my case. I do not argue in this chapter that the same institutional arrangement cannot have more or less competent version, but that it is as competent as its alternatives, given the same electorate.

This chapter concludes my solution for the Asymmetry Puzzle. Part I showed which considerations count in favor and against enfranchising the less-than-minimally competent, establishing that these considerations represent an internal conflict within the ideal of popular sovereignty as political equality. In the present chapter, concluding Part II, I show that no normative conflict threatens equal franchise and voting power above the minimum threshold. Political equality requires equal franchise, and absent conflicting requirements, this requirement prevails against the backdrop of an unequal distribution of competence within the electorate.

7.1. The Equality Constraint: What Exactly Should Be Justified?

A bulk of recent work in democratic theory has paid close attention to the justification of equal voting rights and equal voting power. In fact, some recent work is characterized by an almost exclusive focus on the equality of voting rights and power. A strand of democratic theory which might most aptly be characterized either as relational egalitarian or, broadly speaking, republican, has endorsed a two-stage justificatory structure for justifying that (i) democratic institutions should be preferred to relevant alternatives, that (ii) they (and only they, from among a set of relevant alternatives) have moral authority, and that (iii) may be legitimate agents of coercion (Kolodny 2014b; Viehoff 2014; cf. Viehoff 2011, pp. 255ff). According to representatives of this strand, what is specific to democracy is political equality or *equal* political liberties, as opposed to the mere existence of political liberties, or even their universality. Whatever justifies political liberties—the first step in the structure of justification—, it is the universal distribution of votes and equal voting power that democratic theory should specifically set out to justify—this second step is more specific to the justificatory pursuits of democratic theory (Kolodny 2014a, esp. pp. 200ff).[81] Equal voting power, then, should be justified by

> an Equality Constraint, which would say, roughly, that if a procedure gives anyone a say, it should give everyone an equal say. The Equality Constraint, in essence, requires democracy on at least the equal conception. Accordingly, the hard part is explaining the Equality Constraint. (Kolodny 2014a, p. 202)

Unsurprisingly, there are at least three aspects of the Equality Constraint that require justification. First, that there is a *pro tanto* case for distributing voting power equally. Second, we need to justify that this requirement of equality is not merely a *pro tanto* one, but also an *all things considered* requirement—or at least, why hold inequalities in voting competence among voters irrelevant for the

[81] Cf. Gaus's (1996) distinction between widely responsive and democratic procedures: whereas the former simply distribute voting power inclusively, over a fairly broad range of citizens or even (but not necessarily) universally, the latter are additionally characterized by political equality (pp. 226–230, 246–257). Gaus also believes that is it possible to justify wide responsiveness without at once justifying political equality. As a caveat, it is worth noting that the overall project of justifying democratic institutions, authority and legitimacy cannot limit itself to the Equality Constraint, at least as it is formulated in the citation by Kolodny above, since that would not explain why *anyone* should have political liberties at all. Indeed, Viehoff (2014) is happy to acknowledge that his account justifies rule by lottery just as well as democracy. This goes to show that the overall justificatory project must extend to both justificatory steps so as to rule out both widely responsive inegalitarian regimes and egalitarian non-responsive regimes (i.e. lotteries).

distribution of voting power? And third, proponents of the Equality Constraint also need to justify that the requirement of equality is, properly speaking, a constraint: it does not merely weigh in more heavily than other normative considerations, should there be any, but blocks entirely their application. In my view, the first question is far less controversial—I will only briefly discuss it. The harder challenge is the second question, which concerns the constraint nature of the requirement of equal voting power. The main aim of the this chapter is to provide a convincing answer to this second question. The answer I give to the second question will, at once, show why I find answering the third one less relevant.

7.2. Why Equality?

Liberal democracies rest on the principle of popular sovereignty. While classical theories of popular sovereignty focus on some sort of collective self-determination as the justification of the ideal, modern versions justify popular sovereignty as a principle ensuring political equality between those subject to the authority of the state and those representing this authority (see esp. Kis 2013, and hints of it in the Introduction to Dworkin 1996). Political equality is not a *sui generis* ideal: it is derivative of the general moral equality of persons. It is special in the sense that it applies to relations which are the primary focus of liberal-egalitarian political theory: relations of authority and coercion. The egalitarian theory of popular sovereignty must, in itself, consist of two levels (see Dworkin 2000, pp. 190–191). One level ("vertical equality") serves to justify the institutional guarantees of political equality between representatives and other office-holders exercising political authority, on the one hand, and non-office-holder citizens, on the other ("the people" in a constitutionally specified sense). The other level ("horizontal equality") justifies the requirements of political equality as between members of the people. If some voters have more votes than others, or their votes count with a greater weight than that of others, those who hold lesser voting power do not partake in the exercise of political authority as equals, compared to those with greater voting power. So, popular sovereignty as a principle of political equality requires, *ceteris paribus*, an equal number of equally weighted votes assigned to each member of the electorate. All in all, the main concern of popular sovereignty is that citizens should have such rights and obligations, and states such institutions, which ensure that citizens stand as equals to one

another despite the inevitable reality in representative democracies that some exercise political authority while others do not.

Note that on this conception, equal voting power is not merely expressive of the equal standing of citizens.[82] It is more appropriate to characterize it as *constitutive* of their equal status. This is also the interpretation that at least some recent relational egalitarians about political equality quite explicitly endorse (see Kolodny 2014b, pp. 299–303).[83] The fact that equal voting power is constitutive of citizens' equal standing does not entail *per se* that it is an *all things considered* requirement. Just as symbolic or expressive requirements, equal voting power may be a *pro tanto* requirement only. True, in comparison with symbolic considerations, there are least two reasons why constitutive considerations are more likely to outweigh countervailing reasons. First, while symbolic considerations may be neutralized if the expressive content of a regulation is cancellable (see my Ch. 3), constitutive considerations cannot be neutralized this way. Second, when it comes to weighing up conflicting normative considerations, constitutive considerations typically have greater weight than symbolic ones. Yet these two reasons do not explain, in themselves, why equal voting power should prevail *all things considered*, let alone why it should be a *constraint* on the application of conflicting normative considerations.

7.3. The Easier Problem: Constraining Externally Justified Epistemic Restrictions

Equal voting power in the face of the unequal distribution of voting competence may be challenged by epistemic considerations that are entirely independent from the normative ideal underpinning equal

[82] János Kis (2003) holds that the requirement of distributing an equal number of votes to each is an expressive or symbolic requirement, but the equal weight of the votes is not—equal voting power entails both (pp. 66–67, 72). So, while I do not take a stand here on whether expressive or symbolic considerations count in favor of equal voting power (they most probably do, though that may be a weaker case than usually presumed, see my Ch. 3), I do assume that constitutive reasons of equality do support it.

[83] I take it that relational egalitarians about political equality (Kolodny 2014ab, Viehoff 2014) are, at least in broad terms, also concerned with popular sovereignty as an egalitarian principle. Or, to put it in a different way, popular sovereignty is a relational ideal specifically concerning political relations, derivative of a more general conception of moral equality. Relational egalitarians have recently been more interested in the horizontal equality aspect of popular sovereignty—which seems to be quite crucial to the ideal—, and for that reason, it may be less precise to character them as proponents of popular sovereignty than to characterize proponents of the latter ideal as relational egalitarians. Yet relational egalitarians (notably, Kolodny and Viehoff) also share with egalitarian proponents of popular sovereignty (notably, Dworkin and Kis) the idea that the specialty of *political* equality consists in the fact that political association (i.e., membership in political communities) is non-voluntary, and its non-voluntary nature triggers more demanding egalitarian standards than non-political voluntary association (see, e.g., Kolodny 2014b, pp. 303–304).

voting power. Such epistemic considerations, in the terminology I use in this thesis, are intended to justify *external* restrictions on the equal distribution of voting power. Epistemic considerations, if independent, may require (*pro tanto*) that political decision-making be (epistemically) justified (see Brennan 2011ab), or that they yield true decisions over a domain of questions (see Estlund 2008, Gaus 2011, pp. 263ff). John Stuart Mill (1991 [1858]) can be interpreted as representing this position, and in my view, it is fair to interpret Caplan (2008) as well as Somin (2013) as at least implicit proponents of this view too.[84] The quality of decision-making, as they see, is jeopardized by the equal distribution of decision-making power. This quality is seen as an independent, epistemic value instantiated, for example, in policies that reflect state-of-the-art social science (or what authors regard as the true theory from among competing ones in state-of-the-art social science, see Gaus 2008, p. 295). Politics should capitalize on the knowledge and methods that contemporary scientific and academic inquiry has accumulated—either for the intrinsic value of epistemically adequate pursuits, or for the instrumental value of increasing the efficiency of political (in the eyes of these authors, mostly economic) decisions.

According to this position, epistemic and moral (political) egalitarian ideals are or can be in conflict.[85] So, we need a principle to decide which ideal should prevail. This is easier to find, I believe, if intrinsically epistemic reasons conflict with moral ones. Morality, in this case, is very clearly *overriding*. We need not look into the details of the particular requirements to reach this conclusion: it suffices to look at the normative realms engaged. Moral reasons, I assume, are constraints on the application of requirements grounded in different normative realms, and the epistemic realm is an

[84] I use the word "implicitly" since Caplan (2008) as a political economist is not putting forward, strictly speaking, a normative political theory. However, his work is clearly motivated by an ambition to show that exercising political authority as equals is incompatible with the higher epistemic quality of political decisions—and he shows no doubts about which one should be compromised. It is just that he sees the solution for incompetent rule in shrinking the domain of questions that are decided in politics, and in extending the domain of questions which are sorted out by private market transactions (see, e.g., pp. 3–4). So, his solution is not the unequal exercise of political authority, but refraining from exercising it at all, over a certain domain of issues at least.

[85] This is not necessary, of course. It is possible to argue that purely epistemic considerations, as applied to the domain of questions relevant to politics, do not practically conflict with political egalitarian requirements. Instead, they may be co-extensive in the sense that they prescribe the same set of institutions and the same rights and requirements. Arguing that the epistemic potentials of democracy can be justified by a properly amended version of the Condorcet Jury Theorem, as for instance Landemore 2013 (pp. 149ff) does, is a strategy along exactly these lines.

especially clearly overridden competitor (cf. Philips 1979). Think about research ethics: it is a very firm intuition that moral standards should never be compromised purely for the sake of epistemic benefits or requirements.[86] This is why I call these external kinds of conflict he easier cases.

7.4. The Hard Problem: Constraining Internally Justified Epistemic Restrictions

What I take to be the 'hard problem' of equal voting power in the face of unequal voting competence stems from an apparent conflict *within* morality. As discussed before, the moral principle of popular sovereignty is grounded in the ideal of political equality, which in turn is grounded in the ideal of moral equality. Now, the very same ultimate normative ideal also entails requirements of substantive justice. Many endorse that equal democratic participation and substantive justice are requirements of the same ultimate ideal (see, e.g., Christiano 2008; Dworkin 1996 and 2000; Kis 2009). And some also recognize that this gives us at least *pro tanto* reasons to establish and maintain political decision-making procedures which are epistemically conducive to the realization of the substantive requirements of justice.[87] Indeed, this epistemic proceduralist consideration provides a sufficient condition for the justification of certain characteristic institutions of liberal democracy, such as representative law-making and constitutional review: "*if* epistemic asymmetry holds between alternative decision procedures, *then* the framers of a constitution for a future republic have a reason from self-government for precommitting the community to the epistemically superior procedure" (Kis 2009, p. 578; emphasis in original).[88]

But how far can a compromise between substantive justice and procedural requirements of political equality go? Acknowledging, as I do, that both are aspects of the selfsame normative ideal, it is still

[86] The hard cases, of course, are those where epistemic requirements are not *purely* epistemic, but themselves are instrumental to realizing further moral requirements. E.g., to have an extremely blunt and underspecified example, is it morally permissible to infringe upon someone's rights if the findings of the research project in question could help us save the world? Even if you say yes, however, this does not justify an external restriction on morality, but settles a conflict within morality itself. I delve into similar, internal conflicts below.

[87] See, e.g., Estlund's (2000) paper, where he writes, "political egalitarianism exaggerates individual rights in the conduct of political procedures, and neglects the substantive justice of the decisions made through those procedures" (p. 127).

[88] Kis (2009) circumscribes the domain of epistemic questions that would be concerned: "epistemic asymmetry matters in that it might affect a particular class of decisions, those determining the status of the members of the group" (p. 578). This limitation leaves the scope of the political epistemic inquiry rather broad, since—following Dworkin (1996)—the status of the members of the political community ("moral membership", see pp. 24ff) encompasses a broad range of questions concerning substantive justice too.

counterintuitive to say there cannot be any normative conflict between them that requires a principled resolution. It is only that the conflict we take seriously is of the internal kind. But this does not eliminate the logical possibility that political equality may be compromised, or at least the procedural requirements of political equality, if you like. There is certainly no way to conceal by conceptual reframing the fact that, logically speaking, there can be a conflict here: the more egalitarian procedure may not be the epistemically superior one. And this gives rise to a slippery slope objection.

The objection goes as follows. The reason for accepting representative lawmaking and constitutional review as opposed to direct democracy without constitutional limits is that the previous institutional setup realizes the *same* ultimate ideals as equal political procedural rights realize, but it *also* realizes other requirements grounded in that same ideal *better due to its superior epistemic potentials*. But if that is a sufficient reason to accept these institutions, why not go further and distribute voting power unequally, e.g. by weighted votes, tracking the distribution of voting competence? In other words, what is special about equal voting power that fends off the possibility of a similar compromise in an attempt to choose epistemically superior institutions to realize substantive justice? Viehoff (2014) seems to be acutely aware of this possibility:

> an egalitarian procedure may lack authority because it is insufficiently likely to reach the correct conclusion. This is not to say that submission to the authority is justified by the concern for the quality of the outcome. It is, rather, to say that the benefits of submission to the democratic authority, measured in terms of relational equality, may be insufficient to justify the expected costs measured in justice or the common good. (p. 372)[89]

So, if representatives are better positioned to make epistemically reliable decisions, and so are judges on a constitutional court, why not exclude voters altogether? Or at least, once we can locate the reasons that make the latter better positioned, why not provide voters that are epistemically better positioned than others for similar reasoned accordingly weighted votes?[90]

[89] Further, Viehoff (2014) acknowledges that representative democracy itself seems to be a compromise to political (relational) equality between citizens (p. 363, n. 37).

[90] Cf. Christiano's (2009) critique of Estlund's epistemic proceduralism: " The question I have is, why expertise in grasping and applying these substantive standards would not be sufficient to justify rule by such experts?

7.5. The Offsetting Argument

One possible way to put a wedge between equal voting power and the domain of epistemically motivated mechanisms that seems to be extending at the expense of equal popular participation, is to argue, roughly, that unequal, competence-weighted voting rights would result in a value loss that representative and countermajoritarian institutions can avoid. Proponents of this argument may argue, following Kis (2006, 2013), that representative lawmaking in fact results in a *pro tanto* decrease in political equality between citizens (this is a concern of the vertical dimension political equality is about). Yet this *pro tanto* loss can be recovered or offset by compensatory measures. The latter include guarantees of free and fair elections organized at reasonable intervals, ensuring that representatives can be held politically accountable by voting them out of their offices, on the one hand, and representative accountability between elections (e.g., robust freedom of information and political speech), on the other (see also Waldron 2016). Horizontal political inequalities, the argument goes, cannot be offset in the same manner. Therefore, they inevitably result in overall value loss in political equality *all things considered*, and not only *pro tanto*. So, you may argue, this draws a principled distinction between permissible and impermissible sacrifices of political equality for the sake of substantively more just political decisions. Those political inequalities that cannot be offset should not be permitted—including unequal voting rights and power.

However, the Offsetting Argument—while it incorporates significant insights about the diversity of the guarantees of political equality—basically reasserts and helpfully elucidates the Equality Constraint. But it does not provide the relevant kind of argumentative support for the constraint. The fact that a value-loss free solution in terms of horizontal equality is not available does not show that we should prefer uncompromised horizontal equality even if it is an epistemically compromised procedure in the service of justice political decisions. Yet that is exactly the point to be proven. So,

Estlund responds to this worry by saying that 'any group who might be put forward as such an expert would be subject to controversy, a qualified controversy in particular' (p. 36). This is meant as a way of ruling out invidious comparisons. But it is not really explained why these are invidious comparisons. If there is a generally accepted set of standards and some are better at grasping and implementing those standards than others, that looks like a comparison that all qualified persons should be able to accept" (p. 236).

further argument is necessary to show that equal voting rights and powers should prevail, all things considered. This is what I hope to achieve in the next subsection.

7.6. The No Conflict Argument

7.6.1. The Structure and Distinctiveness of the Argument

The position I wish to defend here is that the conflict between equal voting power and epistemic proceduralist concerns rooted in the same ultimate moral ideal is actually spurious in liberal democracies. The argument takes the following shape:

> (P1) The ideal of equality entails both popular sovereignty and the requirement of substantively just (egalitarian) decisions.
>
> (P2) Popular sovereignty requires equal voting power.
>
> (C1, from P1 and P2) The ideal of equality entails both equal voting power and the requirement of substantively just (egalitarian) decisions.
>
> (P3) If equal voting power and the requirement of substantively just (egalitarian) decisions cannot both be fully realized, then a further principle is necessary to determine which one of these *pro tanto* requirements has normative priority.
>
> (P4) Liberal democracies maintain political decision-making procedures which guarantee the overall epistemic potential of political authority in ensuring substantively just decisions, regardless of equal voting power, just as well as the institutional alternatives of liberal democracy with competence-tracking, unequal franchise.
>
> (C2, from C1, P3 and P4) In liberal democracies, voting power should be equal, *all things considered*.

The crucial premise of the argument is (P4), and in establishing its truth, I will hugely rely on my findings in Ch. 5. However, before embarking on that, I would like to clarify the argumentative strategy deployed here, and the significance of the argument. The argument is essentially an *error theory of justice-oriented epistocracy*. It does not, strictly speaking, show the Equality Constraint to be true. Rather, it aims to show that in liberal democracies—and only there!—it is unnecessary to decide on the truth of the Equality Constraint, the principle which would rule in favor of equal voting power

no matter how strongly epistemic proceduralist considerations count against it. Instead, the argument shows that the conflict between the procedural, political egalitarian considerations, on the one hand, and the epistemic proceduralist considerations motivated by a search for substantive justice, on the other, does not practically arise against the backdrop of liberal democratic institutions. Of course, this still leaves open the theoretical question whether and why the Equality Constraint would be true as applied to other institutional arrangements—for example, direct democracy or constitutionally unconstrained legislation. Yet as I think there are several moral reasons to prefer liberal democracies—i.e., representative and constitutional democracies with a universal franchise—to their alternatives, this should be a satisfying result.[91]

Three further remarks are in place. First, a methodological one: the argument may appear contingent. And in a way, it truly is: it relies on the empirical realities and potentials of the institutional context in which equal voting power is embedded. But it is not contingent, I believe, in an objectionable way. The argument relies on an institutional context which is not morally arbitrary, but whose existence I take to be morally required. So, it seems a safe methodological choice, especially in ideal theorizing, to rely on an institutional context which cannot be replaced or abolished without the violation of basic moral requirements.

Second, I take it to be a distinctive feature, rather than a disadvantage, of the argument that it is special to liberal democracies. The distinctiveness of the argument does not consist in the mere fact that it justifies equal voting power in liberal democracies. Other accounts of equal voting power, notably Christiano's (2008) theory, also envision to justify liberal institutions in liberal democracies at the same time as equal voting power. What makes the present argument distinctive is the logical relation

[91] As a caveat, I wish to clarify that I do not mean to belittle the theoretical research gap that this strategy leaves open. This is especially so because liberal democracies do—and perhaps should, or at least are permitted to—include institutions that increase the epistemic proceduralist significance of voting power, and thus put some pressure on the argument I put forth here. Among these institutions are forms of direct political participation—notably, referenda—, as well as forms of constitutionally uncontrolled state action—for instance, constitution-making or constitutional amendment that are not themselves subject to substantive review based on the unamended or previous constitution, or perhaps even legislation or executive action in states of emergency. Future research will have to uncover whether competence-based restrictions on the equality of voting power are justified *as related to* any of these scenarios, due to epistemic proceduralist considerations; that is, whether there is any conflict of the kind described above, and if so, whether procedural equality prevails in these cases. This is particularly pressing when it comes to referenda, and less so when it comes to states of emergency during which political participatory rights are usually among the first fundamental rights to be suspended anyways.

between the liberal and the democratic strands of the account. While alternative accounts such as Christiano's conceive of liberal and democratic rights and institutions as merely co-original—i.e., the same ultimate principles justify both kinds, but independently—, the account I put forth here also calls attention to the normative, justificatory dependence *between* the two kinds: equal voting power can be justified not only *pro tanto* based on the same principles as liberal institutions, but also *all things considered* by reference to the latter institutions.

Third, I do not mean to suggest that the present argument provides a necessary condition for equal voting power. I only hope to offer a sufficient condition. An alternative argumentative route providing a different sufficient condition would be to directly justify the Equality Constraint. Indeed, justifying the Equality Constraint would overdetermine the case for equal voting power despite the unequal distribution of voting competence. Still, if the argument above is sound, then the Equality Constraint—if true—is but yet another sufficient, unnecessary condition of isolating the distribution of voting power from that of voting competence.

7.6.2. Arguing for (P4)

So, what makes (P4), the crucial premise in the argument, true? What are the considerations that pre-empt the epistemic concerns with equal voting power? As I argued in Ch. 5, against Brennan's argument, the epistemic potentials of political decision-making should be evaluated holistically. That is, the subject of the present inquiry is *not* whether equal voting power in itself is epistemically on a par with, or better than, other forms of decision-making. Instead, what needs to be shown is that the entirety of the political decision-making procedure which includes equal voting power as well as representation and constitutional review is not worse than the alternative institutional arrangements which do not include equal voting power but are configured to realize substantive justice. In this light, let us finally see what makes (P4) true.

First of all, assuming a liberal democracy in generally good condition, constitutional review should be expected to rule out morally extremely bad decisions, in the long run. Liberal democratic constitutions entrench, after all, a strong protection of the most uncontroversial substantive requirements of moral

equality. So, in constitutional democracies, avoiding the worst substantive decisions is already secured. This in itself may be thought to satisfy at least a weaker, sufficientarian, minimalist criterion of epistemic proceduralism. But it would not be sufficient to satisfy the stronger requirement that the "epistemically superior procedure" (Kis 2009, p. 578) be chosen out of the available alternatives.

Second, it is worth clarifying that we are not looking for the epistemically *more efficient* institutional arrangement(s), but the epistemically *superior* ones. The difference is crucial. Epistemically more efficient institutions yield epistemically more reliable outcomes than their alternatives, given a constant amount of resources allotted to alternative institutional arrangement. Epistemically superior institutions, by contrast, yield epistemically more reliable outcomes than their alternatives, but potentially at the expense of using up more resources the alternatives would. I do not wish to establish that liberal democratic institutions with equal voting power are necessarily more, or even equally epistemically efficient, than similar institutional arrangements without equal voting power. My claim, instead, is that liberal democratic institutions with equal voting power need not be epistemically inferior to similar institutional arrangements with competence-tracking voting power. The latter may sometimes reach the same levels of epistemic potentials, but perhaps at a higher cost than the former. That does not undermine support for (P4): *pro tanto* rights are sometimes costly to ensure, but that is no good reason against instituting them as rights *all things considered*.

In liberal democracies, representatives are much better positioned, as Christiano (1996, pp. 199ff), Downs (1957), and Kis (2009) argue, to rely on relevant expertise at a much lower cost than voters do. This is especially clear when it comes to the policy-aspect of the questions representatives vote on: economists, policy experts, sociologists working for them full time are at their disposal for advice. And there are good reasons to think these observations hold just as well concerning the knowledge and skills relevant to the principle-aspects of the questions representatives vote on. Principled answers to political questions also require time and energy to take shape, and applying moral principles to complex, specific political issues requires skills and specialist knowledge too, as Kis (2009) argues

(pp. 580–581).[92] Modern representatives and their epistemic potentials should be evaluated more as institutions rather than individuals. This is important for two reasons. One: all these features listed above allow representatives, candidates and their parties to offer voters a choice set at elections that involves as good alternatives as the *most competent* voters could choose from. Two: the freedom of representative mandates is essential to liberal democracies. Thus, no substantively wrong decisions whose rightness representatives are better positioned to judge than voters need to pass into law. While representatives may have *pro tanto* duties to represent issues and views they were elected for, they may still be both legally, and *all things considered* also morally, free to refrain from voting for what they regard as substantively unjust outcomes. So, as I argue in detail in Ch. 5, representatives are allowed to—and are epistemically well placed to—correct for voters' decisions, should the need arise.

You could argue that representatives would not even have to make any 'corrective' decisions, overriding electoral will, or at least not as often, if the distribution of voting power tracked the distribution of voting competence. Assuming, *arguendo*, that this is so, it is still immaterial, as far as the No Conflict Argument goes. For this only goes to show that an arrangement including unequal voting power is potentially more epistemically efficient than one including equal voting power. But it does not prove epistemic superiority—and that is all I insist on.

In fact, given the facts of judgment, the equal distribution of voting power may even increase, rather than merely fail to decrease, the overall epistemic potential of the political decision-making process. As Christiano (2012) argues, more egalitarian control over the agenda of publicly supported research may well contribute to more balanced, less socially skewed research outcomes in the social sciences (pp. 47–50). Thus, better, more balanced information becomes available to policy-makers too. This, in turn, ensures overall better policy-efficiency—which is also necessary to make just policies. The same arguments could hold about research into normative (e.g., moral) issues: a more egalitarian and transparent control over the research agenda may well avoid various kinds of biases related to class

[92] Note that using such expertise is not identical to *replacing* the judgment of citizens expressed through their votes for a candidate or party with a specific program. Party programs necessarily underdetermine legislative action, and votes give only a vague guidance to representatives. So, even if the latter conceive of electoral guidance in matters of principle as binding, they still need (to have adequate access to) expertise on matters of principle to turn electoral will into principled legislation.

directly or indirectly through education, or directly to education (cf. Estlund's [2008] "demographic objection" at pp. 215–219).

7.7. Objections and Qualification to the No Conflict Argument

A. The Forcelessness Objection. You may object that the No Conflict Argument cannot do full justice to the intuitive moral weight of equal voting power, for two reasons. First, the No Conflict Argument, by refraining from the justification of the Equality Constraint, does not justify the outstanding intuitive moral weight of equal voting power. Second, given that the No Conflict Argument does not settle any value conflicts in favor of the Equality Constraint, this argument is limited to showing that inequality of voting competence does not provide sufficient reasons for an unequal distribution of voting power. But this is less than what we may expect, in two sense. On the one hand, we may expect a justification of equal voting power to show that equal voting power prevails in the face of *all* kinds of inequalities, or at least across a broad range of inequalities. On the other hand, we may expect such a justification to show that competence inequalities are *irrelevant* to the distribution of voting power, and not only that the normative considerations that make them relevant do not prevail, all things considered.

What I take to be correct about the objection above is the desiderata that, on the one hand, equal voting power must be backed by a set of very strong moral reasons—and that, on the other hand, these reasons should justify the prevalence of equal voting power over a very broad range of inequalities (including, among other things, wealth, voting competence or education). In my view, however, the principle of popular sovereignty can fulfill these methodological requirements. First, it is true that the full-blown *all things considered* justification of equal voting power without assuming or establishing the truth of Equality Constraint is a piecemeal job, and I have only undertaken to support it against the challenge from unequal voting competence—but this does not mean that equal voting power is not protected against all kinds of inequalities at the end of the day.

Second, popular sovereignty certainly justifies a very strong presumption in favor of equal voting power. But whether it prevails in *all* circumstances is something I have not shown. This seems to limit the scope of my argument, yet I see it more as an advantage than a disadvantage, for two reasons. One:

if the Non Conflict Argument is sound, then equal voting power prevails in the face of unequal voting competence *even if* it is does *not generally* hold that equal voting power should prevail because equal rights to participation are justified by moral considerations that constrain the application of other moral considerations, notably those related to substantive justice. Two: I believe the strength of our intuitions about the constraint character of equal voting power diminishes as soon as we try to think about equal voting power outside of the context of liberal democracies. Consider a liberal autocratic regime such as the (idealized version of the) rule of Joseph II in the Habsburg Empire in the late 18th century. And consider an illiberal but majoritarian state without any guarantees for competent rule with substantively adequate outcomes. Which one is better? I am far from sure that we have any firm intuitions about this. And this is bad news for someone treating political equality strictly as a constraint. That is because if there is no conflict between political equality and the substantive requirements of equality in liberal democracies, the only intuitive support for the constraint nature of the requirements of political equality must come from the context of these non-ideal regimes. So, those who believe in the constraint nature of political equality should find an illiberal democracy much more appealing than a liberal autocracy—if these make any conceptual sense at all. But this is counterintuitive: in fact, liberal institutions seem to be preconditions for the full realization of the value of political equality.

It is also logically possible that political equality is a constraint on the pursuit of substantive equality *only* in the context of liberal democracies. It does not seem crazy, after all, to think that the strength or the status of normative requirements is context-dependent. If this is so, we have an additional explanation for the intuitive force of the judgment that *if* political equality were compromised by the pursuit of substantive equality *in liberal democracies*, *then* we would still insist on political equality. However, in this case, the subjunctive intuition is to remain a counterfactual one forever, since it is only true in liberal democracies—but it is exactly liberal democracies in which, I argued, political equality and the requirements of substantive equality do not conflict.

B. Epistemic Apportionment. You may argue that the No Conflict Argument does not protect equal voting power, without the Equality Constraint, even in liberal democracies in all historical

circumstances. For instance, competence-based, unequal distribution of voting power may occur even if voting district boundaries are drawn with a view to ensuring that the overall competence of the voting process is thereby increased, even if the result is unequal apportionment. Ronald Dworkin (2000), who does not seem to be hugely committed to equal voting power if that conflicts with the justice of political decisions, actually argues, in a like manner, that what appears to be malapportionment is completely permissible practice as long as it results in more just political outcomes (pp. 205–206).

Of course, what is especially radical about Dworkin's proposal is the assumption that in questions that legitimately belong to the realm of majoritarian decision-making, we know the right answers in advance, so we can calibrate the electoral system—at least within the limits of the "one person, one vote" principle—to more reliably yield the right outcomes.[93] The proposal in the objection is less radical, in a way. It only relies on the assumption that transitions from less to more legitimate liberal democracies, or from other institutional arrangements to liberal democracies, often carry with them historical legacies of substantive injustice that are harder to abolish by means of the usual institutional division of labor in liberal democracies. We may not know, in matters of majoritarian decision-making, what good results we exactly expect. But we may know, for instance, that it will be extremely hard to rectify and discontinue past injustices if the special knowledge of affected minorities is not channeled into the voting process with more weight than the assumptions and knowledge of majority voters who, say, continue to exhibit racist tendencies.[94] So, the proposal is not to tweak voting power

[93] Dworkin (2000) conceives of the "one person, one vote" principle as a constraint justified by the symbolic significance of the franchise. As I argue in Ch. 3, we had better have a better case for the universality and numerically equal distribution of the right to vote than merely symbolic or expressive considerations—and fortunately, we do.

[94] I see a recent decision of the U. S. Supreme Court as potentially justifiable in a similar manner. In *Evenwel* v. *Abbott* 578 U.S. ____ 2016, the Court found that it is not unconstitutional to draw the lines of voting districts by equalizing the full population of voting districts, instead of equalizing their *enfranchised* population. The permitted practice obviously increases the weight of the votes cast by voters residing in districts that have a larger proportion of unenfranchised population. Although the Court attempts to support the decision on different grounds, it could be argued, given appropriate empirical assumptions, that full-population-based apportionment is a way to ensure that members of communities that have been previously subject to blatantly unjust treatment can get more voting power. (Assume, e.g., that having been subject to blatantly unjust treatment may correlate with a higher proportion of imprisoned and therefore disenfranchised population, or higher birth rate and therefore a higher proportion of not-yet-enfranchised population). This shift in voting power, in turn, may be valued because it helps to give emphasis to a perspective hitherto neglected in legislation, which seems necessary to substantively just lawmaking—whatever the right laws are.

so as to ensure that an already known answer be 'found out', but rather to ensure better epistemic potentials for the entirety of the political decision-making procedure—only temporarily, till injustices are reduced, and liberal institutions are strengthened, to an extent that securing substantive justice becomes an attainable goal without any interference with equal voting power. If this is permissible, the objection goes, then the No Conflict Argument has only a limited application even in liberal democracies.

In reply, I do not find the proposal intuitively clearly objectionable. Even if the No Conflict Argument allows for the proposal, it ensures that the proposal be much more modest and qualified than Dworkin's original one. The No Conflict Argument only allows epistemically motivated apportionment if (i) its increased epistemic potentials can be proven without reference to allegedly correct outcomes; (ii) it is meant to correct for historically induced, currently experienced injustices; (iii) liberal democratic institutions cannot provide reasonable remedy for these injustices without restricting the equality of voting power; and (iv) restrictions on the inequality of voting power are only temporary, to be abolished once the entirety of the political decision-making process regain its ability to ensure substantive justice without restrictions on equal voting power. These are severally necessary conditions that severely delimit the applicability of epistemically motivated apportionment.

C. More and Less Competent Liberal Democracies. You may object that it is a mistake to think that the competence of the enfranchised electorate plays no role in the competence of liberal democratic rule. Compare two liberal democracies: both of them have the exact same absolute and relative distribution of voting competence in the population. But in one of them, the mean competence of this electorate is much higher than in the other one, either because only more competent citizens are enfranchised, or because more competent voters have more voting power than less competent ones.[95] It seems very intuitive to think that the less egalitarian, less inclusive enfranchisement regime contributes to an overall more competent rule that is also more capable of meeting the substantive requirements of equality.

[95] Assume, further, that the number of voters in the less egalitarian, less inclusive enfranchisement regime still allows for the same "wisdom of the crowds" and other, cognitive diversity-driven epistemic effects as the number of voters in the more inclusive regime.

I do not question the intuition this objection relies on. However, the objection applies the wrong comparison. I need not show that the worst liberal democracies are just as competent, overall, and thus comply just as well with substantive requirements of equality, overall, as the best liberal democracies. It is obvious that there are more and less ideal versions of every possible political institutional arrangement. My aim here was only to give an account of equal voting power despite competence inequalities in ideal theory. For my argument, the relevant comparison does not concern more vs. less competent electorates under the same institutions: instead, we should compare different institutions while holding the competence of the electorate and the enfranchisement regime constant. This is what I have done here: I hope to have shown that liberal democracies are able to successfully correct for the potential incompetence of the electorate, and can produce just as substantively adequate decisions as other regimes with an electorate having the same competence.

7.8. Conclusion

In this chapter, I have provided a novel defense of equal voting power despite variations in competence above the minimal competence-threshold. My aim was *not* to justify that equal voting power is a constraint on the application of other normative considerations, and hence it always prevails over normative considerations that fuel a requirement of competent rule. This would be the usual way to proceed for theories that regard liberal institutions as potential restrictions on political equality.

Instead, I have tried to turn the table and ask: given a justified requirement of competent rule, related to substantive egalitarian requirements, is there any reason *against* equal voting power? I have argued that there is none. This is good news since both equal voting power and the substantive requirements of equality that justify a requirement of competent rule derive from the same ultimate normative ideal. So, unlike what I found below the minimal competence-threshold, where there is a conflict between requirements of political equality, I have hopefully shown that there is *no* similar conflict between equal voting power as a

requirement of political equality, and other, substantive requirements of equality, above the minimal competence-threshold. This coheres well with the liberal-egalitarian idea that typical liberal institutions such as representative lawmaking and constitutional review do not compromise with egalitarian democratic ideals. On the contrary: equality can be more fully realized in the presence of the latter. It takes liberal institutions for the people to be sovereign and exercise political authority as equals.

8. Conclusion

8.1. Summary and relevance of the findings

This dissertation set out to provide answers to the questions that the Asymmetry Puzzle raises. Why is it that voting competence matters for the distribution of voting rights and voting power below a certain threshold, but it does not matter above it? Why is it that children should be equally excluded (like Amy, with whom I started this dissertation), but adults with outstanding voting competence (such as Dan) should be enfranchised on a par with adults who barely hit the competence threshold (see Brad)? And why is it that our intuitions are so torn about the enfranchisement of severely mentally disabled people (like Chris)?

Let me first summarize the answers this dissertation provides to the questions concerning the 'lower division' of the competence scale.

1. Popular sovereignty requires that all subjected to law should have an opportunity to influence laws they are subject to. The all subjected principle, in fact, is a requirement of vertical political equality that ensures no-one who is subject to it *merely* suffers subjection, without the opportunity to contribute to the authorship of laws she is subject to. Whether the all subjected principle supports the enfranchisement of those who are less-than-minimally competent depends on how we interpret 'subjection', as I have argued. If 'subjection to law' is interpreted as being authorized to exercise one's rights, then only those who are competent to exercise the liberal rights they hold are subject to law in the relevant sense. In this case, the principle supplies no reasons for enfranchising children or adults with less-than-minimal competence. In fact, it provides a *pro tanto* requirement to exclude all those who are not subjected, in the relevant sense, to law—including the less-than-minimally competent. I have argued, however, that we should prefer an alternative interpretation of the all subjected principle.

If 'subjection to law' is interpreted, as I argued, as meaning that someone's rights and obligations are determined by a given body of law, then the all subjected principles applies to insufficiently competent adults and children too—their rights and obligations, after all, are also determined by the laws they are subject to. Under this interpretation, the all subjected principle provides a *pro tanto* requirement to enfranchise all right holders below the competence threshold. Popular sovereignty has a strong tendency to favor an unrestricted universal franchise within the class of those subject to law, and this tendency applies here too.

2. Votes are meant to be laden with cognitive content: a judgment concerning moral principles of justice. This opens up the logical space for an account, put forth by Thomas Christiano (2008) that holds that the individual interests protected by the right to vote in liberal democracies are grounded by the facts of judgment. On such an account, those who do not have the capacity to deliver such judgments at all do not have a judgment-related interest to participate in political decision-making. So, on condition that the interests related to a capacity to make moral judgments ground a right to vote, the exclusion of those who are not minimally competent—who lack the capacity to judge moral questions—is *pro tanto* permissible. I have argued that Christiano's account does not have objectionably epistocratic tendencies. Further, I have shown that Christiano's account explains the intuition that those who are less than minimally competent may be uniformly and equally disenfranchised despite differences between their voting competence levels, rather than gradually enfranchised (say, with votes worth 0.2, 0.4, then 0.7 etc. the weight of a statistically normal adult's vote). But, as I have argued, this account does not even provide a *pro tanto requirement* to exclude those less-than-minimally competent. This is counterintuitive in the sense that intuitions concerning competence-based restrictions typically have a different deontic quality: they concern requirements, whether of exclusion or inclusion, but not permissions. Finally, the account

does not show why we are more torn between exclusion and inclusion regarding adults with severe mental disabilities than when we consider children.

3. Popular sovereignty as political equality has substantive requirements, on the one hand, and symbolic or expressive requirements, on the other. Symbolic considerations grounded in popular sovereignty may justify a *pro tanto* requirement to refrain from excluding a member of the political community from the franchise. I have argued, however, that this *pro tanto* requirement is conditional on the assumption that the negative expressive content conveyed by exclusion is not cancellable. Furthermore, I have argued that if symbolic considerations conflict with substantive ones, as they do regarding the enfranchisement of those less-than-minimally competent (see below), it is generally more likely that substantive ones will prevail in *all things considered* judgments.

4. Popular sovereignty, as I understand it, is a complex ideal of political equality. But votes that voters cast without making a sufficiently independent voting-relevant judgment, as a result of manipulation or impermissible deference to someone else's judgment, undermine political equality. Such votes are additional, illegitimate vehicles of someone else's political judgment. I have distinguished two reasons for which casting a vote based on not sufficiently independent judgment can be objectionable. First, if a voter manipulates other voters into voting in a specific way, a manipulator effectively casts more than one vote: one directly and some others indirectly by manipulation. This creates an undue advantage for the manipulator, and an undue disadvantage for citizens who are neither manipulators nor victims of manipulation. So, manipulation violates each third person's right to an equal vote. The result, as I have shown, is a violation of horizontal equality. Second, I have argued, if manipulation extends to an excessively large subset of the electorate, the electorate as a collective cannot adequately control their representatives. This, in turn, violates vertical political equality.

Therefore, political equality—both in its horizontal and vertical aspects, albeit in different forms and to different degrees—requires guarantees that prevent manipulation.

In most cases, preventing manipulation or impermissible deference should be realized quite literally: by preventing the act of manipulation or impermissible deference itself (e.g., through the secrecy of the vote, the adequate democratic education of the voters etc.), and *not* by preventing the manipulated, or those who would impermissibly defer, from voting. However, as a last resort, if there is no other effective or morally permissible way of preventing their manipulation or impermissible deference, excluding those from the electorate who are at an excessive risk of being manipulated or of deferring impermissibly to others is a *pro tanto* justified requirement. This primarily concerns citizens with less-than-minimal competence: protecting political equality *pro tanto* requires their exclusion, if they cannot be expected to cast anything else than a vote based on a not sufficiently independent judgment, or no judgment at all. In their case, then, the all subjected principle—which requires the universality of the vote, but carries high risks of manipulation—is in conflict with horizontal equality and vertical equality—which require the prevention of manipulation.

5. External restrictions on the franchise, I have argued, do *not* follow from the assumption that individuals have a right against the incompetent exercise of political authority over them. The corresponding requirement of competent rule should be applied holistically to the entire political decision-making process, and not atomistically to each element of this process, let alone to each individual agent participating in the process. Moreover, I have argued that in liberal democracies, the primary responsibility for the competent exercise of political authority lies with representatives and institutions of constitutional review. Therefore, individual voters who cannot contribute to holistically competent government need not—and should not—be excluded from the electorate for this reason.

The above are *pro tanto* requirements for and against excluding those who are less-than-minimally competent. All these requirements are ultimately justified by the ideal of popular sovereignty as political equality. So, I hope to have shown that the normative conflict concerning the enfranchisement of less-than-minimally competent citizens is *internal* to this ideal. However, the *pro tanto* requirements I have argued for in this thesis do not clearly add up to a conclusive, *all things considered* judgment. If universality (the all subjected principle) or the symbolic aspects of popular sovereignty are truly compromised by the relevant exclusions, we need further principles to show if a compromise in universality (and, potentially, symbolic harm) is preferred to a compromise in the equality of the vote, or the other way round.

Still, I believe this much is sufficient to draw some substantive conclusions about the right to vote of children and mentally severely disabled adults. Let us start with children. The symbolic harm in their disenfranchisement is greatly reduced, if not cancelled entirely, by the fact that all children will, as a rule, be enfranchised as adults. The lack of a capacity to judge, and the consequent lack of the corresponding interests, also mitigates the overall loss. But I am far from sure that the all subjected principle is not compromised at all by disenfranchising children, on the more permissive interpretation: after all, their rights and obligations are also determined by laws they cannot participate in shaping. If this is so, popular sovereignty does suffer from disenfranchising children—all we can say is that it suffers less than it would with their enfranchisement. Since there is a conflict within the ideal of popular sovereignty at the level of ideal theory, the all things considered best policy cannot be one that involves no value loss at all. So, to return to our protagonists, disenfranchising Amy may well be an all things considered requirement, but it is not one without any loss.

What about adults living with severe mental disabilities, like Chris? First, I believe the symbolic harm in their disenfranchisement is *more difficult* to reduce than in the case of

children, by cancellation of the expressive content conveyed by disenfranchisement. Whether the relevant symbolic, expressive content can be cancelled requires further investigation. Second, the body of law that applies to adults is more extensive than the body of law applying to children, which also increases the relative weight of the requirement of inclusion stemming from the all subjected principle, on its more permissive interpretation. So, the balance of reasons relevant to the enfranchisement of less-than-minimally competent adults may be more balanced indeed than the reasons applying to the enfranchisement of children. This may well explain why we are much more intuitively torn about disenfranchising less-than-minimally competent adults than about disenfranchising children.

Let me summarize my findings concerning the equality of the vote and voting power, despite inequalities of voting competence, above the threshold of minimum competence:

1. I have argued that the requirement of responsiveness to, and equal consideration of, voters' interest is not sufficient to exclude political decision-making procedures other than those which distribute voting power equally. So, the requirement does not exclude some alternative distributions of voting power which track differences in competence. I have argued that at least one such procedure exists which publicly realizes equality and yet distributes voting power unequally. Further, I argued that there can be no right to equal voting power grounded in an equal right to give effect in politics to one's judgment about others' and one's own competence—for the same interest would ground an equal right to hold (as opposed to a right to compete for) a representative office.

2. The positive, novel account of equal voting power I have put forward relies on the assumptions that political decision-making should also realize the substantive requirements of liberal equality, and that competence requirements are legitimate—*pro tanto*—if they aim to achieve these substantive requirements. Competence, in this regard, has instrumental value.

Framing the problem of competence for the distribution of voting power this way, the central question is whether substantive equality should be compromised by insisting on political equality in the voting procedure, or the other way round. Similarly to my previous findings concerning the requirement of competent government—where the competent exercise of political authority figured as a non-instrumental value, though—I have argued that in liberal democracies, the alleged conflict between the substantive requirements of equality and equal voting power as a requirement of political equality does not even arise. So, whereas requirements of popular sovereignty as political equality are in conflict under the threshold, my view is that there is no value conflict above the threshold. Indeed, part of what is special about liberal democracies is that their complex institutional arrangements allow for decisions which are substantively no worse than what liberal institutions without equal voting would yield. There is no need to give Dan more voting power than Brad: the only reasons we would do that would be to ensure competent government for non-instrumental reasons, and to ensure outcomes that substantively respect citizens' equal dignity. Neither makes the unequal distribution of voting power necessary. And since political equality is a weighty *pro tanto* value at the very least, it should not be restricted, *all things considered*, if it is not necessary to restrict it.

Hence my account of the Asymmetry Puzzle is complete: while enfranchisement below the competence-threshold is a matter of weighing up conflicting requirements of popular sovereignty as political equality, equal voting rights and voting power on and above the same threshold is an unchallenged requirement of popular sovereignty as political equality.

To the best of my knowledge, the present thesis is the first systematic treatment of the Asymmetry Puzzle. In addition to the specific arguments and novel findings, its overall contribution to democratic theory is twofold. On the one hand, I provide a justification of the divided nature of our intuitions about competence-based disenfranchisement. The

comprehensive analysis and justification of these intuitions has been a long-standing debt of democratic theory. On the other hand, I provide a new approach to justifying equal voting power above the threshold, and to the primacy of political rights over requirements of substantive equality, in general. This approach hopefully sheds light on another aspect of the liberal-egalitarian intuition that liberal democracies are no mere compromises of conflicting ideals. Instead, they stand out as political institutions which allow the most extensive and most conflict-free realization of the varied requirements of moral equality.

8.2. Policy relevance

This thesis concerns a rather applied topic in democratic theory, even if the approach is fairly theoretical to this applied topic. Hence, a brief comment on the policy-relevance of the results summarized above is due. I believe my account of equal voting power despite differences in competence above the threshold is quite directly applicable. It is a principled defense of the equality of the vote against one of its most popular challenges. Similarly, my argument against external competence-based restrictions on the franchise should falsify the popular view that roughly college level education is necessary for enfranchisement. Yet, admittedly (and fortunately), in most liberal democracies, equal voting power above the threshold does not face serious practical, legal or political challenges anyways.

It is enfranchisement under the minimum competence threshold that is in the focus of more heated legal and political debates, even in contemporary liberal democracies. In this regard, the most important limitation to the policy-relevance of this thesis is intentional: namely, its strictly principle-based argumentation. This thesis sets aside several significant practical considerations which would count against disenfranchisement, especially if it involved testing. The lack of a clear set of criteria for judicial decisions on disenfranchisement; the frequency of abuses in disenfranchisement, or its discriminative application; or the questionable independence of the judiciary—just to mention a few potentially relevant

considerations—are all very good (at least *pro tanto*) reasons against disenfranchisement. Weighing up these considerations with the more principled reasons provided in this thesis is clearly necessary to turn my findings into actual policy. And I believe the outcome of this balancing exercise is very likely to be a less ambiguously pro-enfranchisement position concerning adults below the competence-threshold.

It is also noteworthy that the population I referred to in this thesis as "adults living with severe mental disabilities" is extremely diverse. One practical upshot of this thesis is that it provides criteria to assess whether some kind of mental disability is relevant at all to minimal voting competence. Most of the mental disabilities and psychiatric diagnoses for which votes are taken away, from Eastern Europe to the US, are irrelevant to the minimal capacities one needs to make sufficiently independent moral judgments, as spelled out earlier. (In other words, the 'proper judgment' test courts tend to use for restrictions in Europe, in conformity with the official legal opinion of the European Commission for Democracy through Law (ECDL [2011]), is applied too broadly, see Gurbai [2014], p. 78). The rather permissive, and socially embedded account of independence in moral judgment I put forth is highly relevant to screening overly restrictive policies. So, the findings of this thesis can also be useful to argue for severely limiting the class of cases that would qualify for judicial disenfranchisement even in principle—let alone if practical considerations are added to the calculus of reasons.

8.3. Limitations and directions for further research

As all theses, this one also has its limitations, which I hope will provide inspiration for both my and others' future research.

First, I do not attempt here to provide a principled way to settle the conflict between the competing requirements of popular sovereignty as political equality *below* the competence-threshold. More theoretical work on the requirements of popular sovereignty is required to

settle these conflicts. I wish to address this question in future work, which will both help us get a more nuanced principled, theoretical understanding of these requirements, and even more policy-relevant findings.

Second, it is a necessary limitation of my account of equal voting rights and power on and above the competence-threshold that it only defends equal voting power against the challenge of unequally distributed voting competence. There are, of course, numerous other challenges against which equal voting rights and power need to be protected: for instance, inequalities in property, wealth etc. So as to provide such a more comprehensive defense, one may proceed in four different ways. One: it may be shown that unlike competence-based restrictions, these restrictions do not even serve any legitimate aims. If so, there is no conflict because out of two putative values, one is no real value at all. Second: it may be shown, in a piecemeal fashion, that even if the putatively conflicting values are really valuable to pursue, each and every one of these alleged challenges to political equality is spurious, similarly to the challenge of unequally distributed competence. Whatever value is represented by restrictions on equal voting power, this strategy would conclude, none is actually in conflict with political equality. So, there is in fact no reason for restricting equality. In this case, it's not the values that are not real, but the alleged conflict between them. Two: applying a similarly piecemeal approach, it may be shown that whatever alleged value is represented by restrictions on equal voting power, all are in conflict with political equality, but political equality prevails in all of these particular conflicts because of the balance of the reasons involved. Third, it may be shown that political equality is a true constraint: no balancing should take place at all, regarding these challenges—equal voting power as justifies by political equality enjoys absolute priority over other reasons. I do not wish to pre-judge the case for any of these strategies—though liberal egalitarian commitments intuitively point toward the first or second of these possible routes.

Third, and related to the previous point, the present thesis leaves open the question whether political equality is a constraint, properly speaking, on the pursuit of other liberal egalitarian values. If it is, then equal voting power against the backdrop of unequally distributing voting competence is supported by a further consideration. This does not diminish the contribution of the present thesis in this regard. I have only argued for a sufficient, but not a necessary condition of equal voting power for unequally but at least minimally competent voters. If there is an independent further sufficient condition for equal voting power, my argument still shows why liberal democracy is special in as much as it avoids loss in the values that compete with political equality, assuming that the latter is a constraint on the pursuit of these other values.

Fourth, while I focused exclusively on the right to vote, the arguments I make in this thesis certainly have relevance for competence-based restrictions on the right to stand for elections, and on the right to initiate and participate in referenda. Given the greater role subjects of these rights play in ensuring competent rule in a liberal democracy, compared to the right to vote, a wider range of competence-based restrictions on these rights may be justified. Even more severe competence-based restrictions might apply to decision-makers who are in a position to shape the outlines of liberal democratic institutions—e.g., by constitution-making or constitutional amendment—, as these institutions are the very guarantees, I have argued, for the overall competence of the political decision-making process. A detailed account of the role of competence in shaping these diverse participatory rights and institutions requires further research.

Finally, although I focused exclusively on the political philosophy of voting rights in this thesis, the findings presented here have, I believe, significant implications for the ethics of voting, too. On the one hand, the minimalist, more socially focused account of independence in moral judgment that I present in this dissertation clearly has implications for morally

permissible deference to others voters. On the other hand, more importantly, no ethics of voting can do without an ethics of competent political participation—nor can the latter do without an account of the role of competence in the exercise of political participatory rights. A deeper understanding of this role is only the first step toward a new ethical theory of voting behavior; drawing the implications of the findings of this thesis for the personal ethics of voting must be left for another day.

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