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### Meritocratic Representation

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No individual or body can count as the representative of another unless selected or authorized to act in that role. The representative speaks and acts in the name of another individual or group, and this, unlike speaking or acting on another's behalf – say, speaking or acting as a self-appointed advocate – requires authorization in the role. This authorization raises two questions. First, is it legitimate? Is the representative selected by a suitable agent or agency and under suitable rules? Second, is it motivated? Is the selection made on the grounds that the candidate is distinctively eligible or qualified for a representative role?

Under electoral arrangements, authorization comes via the selection of the representative, directly or indirectly, on the basis of a popular vote. And it is the disposition to be responsive to the attitudes of electors, which that very mode of selection is designed to encourage, that qualifies the candidate to serve in a representative role.<sup>1</sup> The candidate or deputy may be responsive at only a general level to the attitudes of electors – say, to their values or interests – or responsive to detailed wishes and instructions; in the first case, such a deputy will count as a trustee, in the second as a delegate.<sup>2</sup>

Suppose, however, that certain individuals are selected for public office on the basis of their merit: their professional and related credentials. Assuming that the mode of selection is legitimate – assuming, in effect, that there is no ground for complaining about the procedure of appointment – the question is whether it could count as conferring a representative status on them. Is there anything about such meritocratically selected personnel that might give us reason to think of them as representatives of the people rather than independent experts? Is there any ground for taking them to have popular authority, not just the authority of Weber's legal-rational administrators?

This question has practical significance. Suppose we think that meritocrats, no matter how suitably appointed, lack any qualifications as popular representatives. Can we regard the things they do in exercise of their office as things that are done in the name of the people? We may be able to take this view if they serve at the bidding of the government that appoints them and if the government is representative of the people, say, because of being popularly elected. But we will not be able to take this view if they are independent in any significant way from those who appoint them: if, in effect, they do not serve at the pleasure of government. And as we shall see, meritocratic appointees are routinely given such independence; the nature of their office requires it. Thus if we cannot make out a case for such officials having representative qualifications, we will have to think of them as playing a role that is hard to reconcile with any notion of popular control of government.

I argue in this chapter that meritocratic selection is consistent with representative standing, looking in particular at meritocratic appointments within an electoral democracy. In the first section, I introduce a distinction between two different sorts of representation, which I describe respectively as *responsive representation* and *indicative representation*.<sup>3</sup> In the second section, I show that the distinction is implicitly recognized in the traditional political practice of ascribing representative status to groups that mirror the population as a whole. In the third section, I show how that there is every reason why individuals as well as groups might serve as indicative representatives of a population. In the fourth, I argue that this gives us reason to think of certain meritocratically appointed officials and bodies as having the status of indicative representatives. In the fifth section, I look at the appeal of such meritocratic representation within an electoral democracy. And then in a short final section, I mention some problems that, as I see it, confront the possibility of establishing a credible, legitimate form of meritocratic representation in the absence of electoral democracy.

The focus of the chapter, it should be noticed, is quite narrow. I am mainly concerned with whether meritocratic authorities can count as popular representatives, and I deal with this question out of an interest in the place they should have in an electoral democracy, drawing on a wider discussion of the role of democracy elsewhere.<sup>4</sup> I begin to join issue with the case for and against a purely meritocratic regime – a regime that does not involve many electoral elements – only in the final section. The remarks I make there serve better as a prologue to further debate than an epilogue to the debate conducted here.

## I. REPRESENTATION, RESPONSIVE AND INDICATIVE

Imagine that I am invited by my university to take part in a committee – say, a committee to inquire into how philosophy may be made as attractive to female students as to male. And suppose that I am unable to serve on the committee myself and that the university authorities, accepting this, propose to install someone who can serve as my representative on the committee – someone who can reliably speak for the judgments or preferences, the principles or the general perspectives, that I am taken to embody. They want someone who can serve in my place to reflect the same attitudes, however concrete or abstract, and to speak or act in a way that is faithful to those attitudes.

In this situation, the authorities may want to have someone on the committee who will be responsive to my wishes as to how the job should be done: someone who will serve in effect as my responsive deputy. In that case, they will look for a representative to whom I can make my wishes known, however episodically. The authorities may want to make the representer responsive to more or less constraining attitudes on my part. They may look for a faithful reflection of the abstract values, procedural or substantive, that they ascribe to me or for a reflection of my more concrete views on issues of policy. In either case, the representer will count as a deputy, but in the first case she will have the status of a trustee, in the second of a delegate.

But this is not the only way in which I might be represented on the committee. Instead of seeking to install a responsive deputy, at whatever level of constraint, the authorities may opt for having someone on the committee who shares my general attitudes, whether on procedural or substantive matters, and is likely to vote accordingly. They will not expect this person to be responsive to me. They may be happy that she does not know what my attitudes are or even know that she is nominated to reflect those attitudes. They will choose her as a representer because her mentality is indicative of my own. Where she is led in her judgments and decisions, I would be likely to be led, if I were on the committee. Or so, at any rate, they believe.

This form of representation, like the other variety, would give the views I am taken to embody a certain impact on the committee's reflections and decisions. The representer will not be a responsive deputy, ready to track what I think, whether on general or particular issues. But, if the authorities have chosen well, she will be a reliable indicator of my general attitudes and of where or how I would go on particular

issues, were I a member of the committee. My attitudes will exercise influence through her insofar as she is chosen for the prospect that she will reflect them. We might describe her as an indicative proxy rather than a responsive deputy.

The essential difference between responsive and indicative representation is easily stated. In responsive representation, the fact that I am of a certain mind offers reason for expecting that my deputy will be of the same mind; after all, she will track what I think at the appropriate level. In indicative representation, things are exactly the other way around. The fact that my proxy is of a certain mind offers evidence for expecting that I will be of the same mind; that is what it means for her to serve as an indicator rather than a tracker. From the point of view of my being represented on the committee, having someone there who reflects my mind, it really does not matter whether the representer is a reliable tracker or indicator. Either figure can give me a presence on the committee, as we say; either can represent me.

The distinction between responsive and indicative representation hasn't been much invoked in the political domain, at least not in the terms in which I am drawing it. It parallels a distinction in epistemology between two ways in which my beliefs may be reliable: that is, reliable representers of the world they depict. They may be reliable trackers of facts about the world, so that if it is the case that such and such, then it is likely that I believe that such and such. Or they may be reliable indicators of worldly facts, so that if I believe that such and such then it is likely to be the case that such and such.<sup>5</sup>

Just as beliefs may relate in either way to the facts they purport to represent epistemically, so representers may relate in either way to the representees that they purport to represent in a political fashion. It may be the case that if a representee has such and such attitudes, at whatever level of grain, then the representer may be expected, in response, to speak and act on those attitudes. Or it may be the case that if the representer speaks and acts on certain attitudes, at whatever level of grain, then given the indicative status of the representer, the representee may be assumed to hold those attitudes. In the first case, the attitudes held by the representee are the causal source of the attitudes displayed by the representer; in the second, the attitudes displayed by the representer are an evidential sign of the attitudes held by the representee. The faithful representer in the first scenario will be reliably responsive to the representee; the faithful representer in the second will be reliably indicative of the representee.

TABLE 5.1

	←		Indicative or proxy
Representee attitudes	Evidential	Representer attitudes	representation
	→		Responsive or deputy
Representee attitudes	Causal	Representer attitudes	representation

The two forms of representation are diagrammed in Table 5.1.

## II. INDICATIVE REPRESENTATION IN TRADITIONAL AND EXISTING PRACTICE

Three metaphors have dominated the political tradition of thinking about the meaning of representation, as Quentin Skinner has recently argued.<sup>6</sup> Two of these, associated respectively with the courts and the theater, answer to the responsive idea of representation. As the attorney acts under the explicit or implicit direction of a client, so the idea is that political representers might act as delegated deputies, under the explicit or implicit direction of their representees. And as the actor constructively interprets the mind of a character, so the idea is that representers might serve as trustee deputies in interpreting and enacting the mind of representees. But the third metaphor identified by Skinner is drawn from representation in the pictorial arts, and it maps onto indicative representation. As the painting is indicative of how the subject of the painting looks, so on this image should representers be indicative of representees; they should be fitted to serve as proxies, not – or not just – as deputies.

Although not articulated as such, the idea of indicative representation figures early in democratic practice, because it is the sort of representation that is achieved or is likely to be achieved under the lottery system that was favored by the Athenians and that also played an important part in later regimes like those of the Italian city republics.<sup>7</sup> This lottery system might be taken as a version of the technique of random sampling, but random sampling put to use in the service of advancing goals espoused by the people as a whole. Although it may have been motivated by a desire to have a regular turnover in the representer body, the important thing from our viewpoint is that it would have ensured a degree of proportional and indicative representation.

The indicative idea also appears in the jury system that was developed in medieval Europe, although again without being articulated as such.<sup>8</sup>

To be subjected to the judgment of one's peers, whether in determining that there is a legal case to answer or that one is legally liable, is to be exposed not to a random arbiter – a chance enemy, perhaps – but to a body that stands in for the community as a whole. The idea is that the jurors should represent a cross-section of the community or at least of the fully enfranchised members: in medieval Europe, the mainstream, propertied males.<sup>9</sup>

The indicative image of representation melded with the responsive image in those writers who argued, from the sixteenth century on, that the elected, presumptively responsive legislature should also be an indicatively representative body. The idea is particularly evident in those parliamentary writers in England of the mid-seventeenth century who look for a “speaking likeness” of the people in those who rule them, “describing Parliament as a ‘representation’ – a picture or portrait – of the body of the people.”<sup>10</sup> Perhaps as a result of that precedent, it became an established element in the thinking of those associated with the American War of Independence and the French Revolution.

Thus, Melancton Smith could write in 1788, in opposing the American Constitution: “The idea that naturally suggests itself to our minds, when we speak of representatives is, that they resemble those they represent; they should be a true picture of the people.”<sup>11</sup> Again, the idea was powerfully endorsed in a speech given by Mirabeau to the French Constituent Assembly in 1789, although he used the image of a map rather than a picture to get it across. According to this version of the model, “a representative body is to the nation what a chart is for the physical configuration of its soil: in all its parts, and as a whole, the representative body should at all times present a reduced picture of the people – their opinions, aspirations, and wishes, and that presentation should bear the relative proportion to the original precisely as a map brings before us mountains and dales, rivers and lakes, forests and plains, cities and towns.”<sup>12</sup>

The idea of combining an indicative with a responsive form of representation gave birth to the proposal, strongly supported by John Stuart Mill,<sup>13</sup> to design the electoral system so as to make the legislature more and more proportional.<sup>14</sup> Is it also behind the practice of organizing the legislature around geographically dispersed districts? It is hard to believe that it did not play some role in justifying that practice, but the evidence appears to be against it.<sup>15</sup> Still, districting does induce a similarity in one dimension – nowadays a fairly unimportant

one – between the population as a whole and the legislature that represents it.

The indicative idea survives in the continuing enthusiasm for proportional representation and has been given new life in campaigns for supplementing electoral representation with novel, statistically representative bodies. It is there in the general policy of organizing citizens' juries that would review various policy issues.<sup>16</sup> And it is present in the notion of the deliberative opinion poll that is chosen as a random sample and then canvassed for its view on one or another issue at two separate times: first, before members of the sample make contact with one another, and, second, after they come together to receive background information, to hear different points of view, and to debate the right line to take on the issue under consideration.<sup>17</sup>

Indicatively representative bodies have been used in many other contexts too.<sup>18</sup> A particularly striking example appears in the Citizens' Assembly that was recently established in the Canadian province of British Columbia.<sup>19</sup> A more or less representative sample of 160 citizens was assembled and given the task, over much of 2004, of reviewing the existing electoral system in the light of various hearings and discussions and making a recommendation on whether it should be amended. The group recommended a change that then went to referendum and won more about 58 percent support. The recommendation did not pass, however, because the government had decreed – without much explanation – that it would need 60 percent support to be put into law.<sup>20</sup>

### III. INDICATIVE REPRESENTATION AT THE INDIVIDUAL LEVEL

The observations in the first section establish that it is conceptually appropriate to recognize two forms of representative relationship, one responsive, the other indicative. And the observations in the second show that political practice, traditional and contemporary, has recognized the value of indicative as well as responsive representation. Although the idea of indicative representation has not been a focus of political thought, it picks up something that has clearly been valued in past practice. But where discussion in the first section suggested that an individual might be indicatively represented by another individual, the political practice described in the second focused entirely on how one group, an assembly, can be indicatively representative of another: the population as a whole. And this raises a question as to whether an



individual as distinct from an assembly might serve in political practice as the indicative representative of the population.

In the case where a group plays the representative role, it is easy to see how it might count as indicatively representative of the represented population. It is composed, say, on the basis of random sampling, in a manner that is meant to ensure a suitable similarity or isomorphism with the population. Is there a similar basis for claiming that an individual might be fit to serve as an indicative representative of a population?

There certainly may be in the case where the population to be represented is characterized by a set of distinctive beliefs or principles, like a religious congregation or a political movement. A randomly selected member of the church or association, or at least a member who is well versed in the group's commitments, might have obvious qualifications to serve in an indicative role. But that is a rather special case, and the question is whether we might identify a basis for treating certain individuals as fit to serve as indicative representatives of less homogeneous groups like the typical population of a contemporary state.

To approach this question, it is important to distinguish between what we may call the compositional and the operational likeness between an indicative representer and a represented group. The statistical sample is a compositional likeness of the larger population, and that is what makes it such an obvious candidate for indicative status. But the compositional likeness is important only because it promises an operational likeness. It provides a basis for thinking that if the smaller group comes to a certain decision in the light of information and discussion, then it is probable that the population would come to a similar decision were it able to process information and conduct discussion in the same way. This is what gives its appeal the idea of an indicatively representative assembly such as the British Columbia Citizens' Assembly.

The compositional likeness or proportionality between an assembly of this kind and the population as a whole would be of little or no significance, however, if it turned out that having been selected for their isomorphism with the population as a whole, the members of the sample received monetary rewards from various pressure groups for taking one or another line. Those special incentives would undermine the probability of the sample's operating as the population would operate in similar conditions. And so the sample would lose its indicative credentials. What is important for indicative status is operational similarity and compositional likeness is significant only insofar as it makes operational more likely.



This observation teaches an important lesson for the present inquiry, as we shall see in a moment. But before coming to that lesson it may be worth remarking that the observation has implications in another area as well. It suggests that the compositionally indicative legislature sought under proportional systems will fail to be operationally indicative to the extent that members are exposed to special electoral incentives. These will lead them individually and collectively to make decisions, unlike the decisions of a body like the British Columbia Citizens' Assembly, that have a diminished claim to reflect how the population as a whole would decide. In 1810, Benjamin Constant<sup>21</sup> already commented on the likely effect of electoral incentives. "You choose a man to represent you because he has the same interests as you. By the very fact of your choosing him, however, your choice of placing him in a different situation from yours gives him a different interest from the one he is charged with representing."

Let us return now to the question of whether any individuals could be fit to serve as indicative representers of a heterogeneous population. Suppose that it is operational rather than compositional similarity that is of importance to indicative status, as our observation suggests. That implies that even when there is no compositional similarity between any given individual and a heterogeneous population – unlike the case with a homogeneous group – it may still be possible for an individual to be operationally in tune with the population, whether generally or in a certain range of decision making. If we can find an individual who displays such an operational attunement, or an individual in whom such attunement can be elicited, then we will have found someone who is fit to be invested with an indicatively representative status. I argue in the next section that those appointed on a meritocratic basis can display precisely this sort of operational attunement and can indeed have an indicatively representative status.

#### IV. INDICATIVE REPRESENTATION AND MERITOCRACY

In any electoral democracy, those selected by the people to hold office are bound to appoint a number of other officials in government. Let us suppose that they appoint them on a meritocratic basis, as distinct from rewarding electoral supporters; this assumption, which surely applies in some cases, will make our discussion more straightforward. Some of the meritocratic appointees will be functionaries who are given the task

of enacting government will. But others will constitute autonomous centers of authority, with a tenure in office or terms of appointment that make them more or less independent of government: they will serve the community but not, as it used to be said, at the pleasure of those elected to power.

Meritocratic functionaries cannot have an independent representative status because they are more or less bound to conform to the dictates of their masters. Whatever standing they have as representers of the people, it will be inherited from the responsively representative standing of the government itself, if indeed the government has such standing. In this discussion, therefore, I concentrate on the question of whether meritocratic authorities, as distinct from meritocratic functionaries, can be taken to have the status of popular representatives. I focus on meritocratic authorities that are characteristic of electoral democracies, but the argument may also have relevance for the meritocratic authorities that are established in other regimes; I turn to that issue in the final section.

The authorities I have in mind in electoral democracies can be cast, broadly, in three categories: contestatory, adjudicative, and executive.

1. Contestatory authorities: those with the duty of raising or relaying complaints and charges against government. They include the auditor general who can raise questions about government finances; the attorney general who has the power to charge personnel in government with malfeasance; ombudsman officials who can hear and raise complaints about administration; and any agents who have the task of gauging offences and raising complaints about government breaches of agreed standards or quotas, say, in the area of diversity or equal opportunity.
2. Adjudicative authorities: those with responsibility for hearing and often adjudicating such complaints or any complaints in the same category that are raised directly by members of the public. They include the judges on the different courts where such charges can be brought as well as the members of any tribunals or hearings that are given suitable powers of adjudication.
3. Executive authorities: those who are charged with duties of a kind for which elected authorities are often deemed unsuitable, having electoral or other special incentives that would create conflicts of interest. These include election commissioners who draw district boundaries; central bankers who determine money supply and

interest rates; sentencing commissioners who give advice on how effective penal sanctions are in deterring crime; statisticians who conduct a periodic census, release seasonal data on the economy, and report on other sensitive matters like crime rates; and experts such as those who grant patents, oversee drug trials and provide checks on food production.

I believe that such meritocratic authorities can reasonably be cast as indicative representatives of the people. They are appointed to public office on such a basis, under such constraints, and with such a brief, that their dispositions to decide matters within their purview are likely to be indicative of how the people want such decisions to be made.

The authorities listed, unlike elected legislative and administrative authorities, are each confined to resolving matters in a well-defined domain. And in that domain the criteria by reference to which people in general want those decisions to be made are pretty clear. Think about what we, the members of the public, are going to want insofar as we accept that we are required to live on equal terms with one another and not seek special privileges for ourselves. We will want complaints and charges to be laid against members of the government in any area where there is a question of a failure of even-handedness or a breach of conventional or constitutional guidelines. We will want the adjudication of such charges to be conducted in an impartial manner with reference to established laws and related expectations. And we will want the duties given to executive authorities to be discharged in accordance with salient benchmarks.

The benchmarks to which we will hold executive authorities are readily illustrated. Electoral boundaries should facilitate party competition without damping the influence of any minority. Interest rates should be set at a level that keeps the long-term as well as the short-term in view. Sentencing commissioners should keep track of the deterrent effect, if any, of otherwise costly and punitive measures. Those in charge of the release and analysis of data should be accurate in the basic information supplied and nonpartisan in the spin that it is given. Those responsible for food and drug administration should make their judgments and impose their resolutions on the basis of impartial assessment without regard to the claims of special interests.

It is important that the criteria at which I gesture in these contestatory, adjudicative, and executive areas are endorsed in the population at large. It is only if they have this endorsement that imposing them on

public authorities can count as imposing a form of popular control on those individuals and bodies. But I think it is overwhelmingly plausible in most advanced societies today that the people do endorse such criteria. If you have any doubts about that claim, ask yourself whether the breach of such benchmarks would be likely to cause a scandal, and provoke outrage, if it became a matter of public knowledge. Clearly the answer is that it would. Can you imagine any informed population – or at least any that is not intimidated by fear of reprisal – remaining quiet and resigned in face of information about government corruption, judicial favoritism, or failures of impartiality in the performance of various executive authorities?

Let it be granted, then, that there are popularly endorsed criteria, recognized on all sides, to which public, unelected authorities ought to be answerable. The next question is whether such authorities can be led by suitable constraints to abide by such criteria, thereby acting in a way that is indicative of how the people would want them to act. I believe that they can.

Suppose that meritocratic authorities are appointed on the basis of their professional skills and standing or, where that is irrelevant, their presumptive detachment and impartiality. Suppose that they are subject to public comment and censure and, like elected authorities, to the possibility of being charged and punished for misconduct. And suppose that they are given clear briefs to implement, and clear benchmarks that they are expected to meet. If these assumptions hold, as they ought to do under most images of the well-functioning polity, then the factors they put in place will combine to ensure that meritocratic authorities live up to the standards or criteria supported by the public. Let meritocratic authorities fail to meet such standards, and the constraints described should ensure that they are exposed to public gaze, subjected to public shame, and punished according to the law. Faced with the prospect of such sanctions for malfeasance or even underperformance, we can reasonably suppose that they will live up in general to the standards that the public expects them to meet.

The sanctions of public shame and legal punishment may vary in importance across cultures, but I note that in many societies, the penalty of public shame – and the reward of public acclaim – may be particularly important. The professionals who may be expected to hold many meritocratic offices will generally subscribe to professional standards of performance and ought to be susceptible to powerful incentives of professional and indeed public esteem.<sup>22</sup> Such incentives will lead them to

shirk the disgrace and penalty associated with being indicted for under-performance or misconduct, and it will provide a motive for avoiding laziness or apathy by holding out the prospect of honor and status. Or at least we may expect that this will be so insofar as the authorities are not bound by partisan ties. Otherwise they may be prone to the temptation to seek standing, not in their profession or community at large, but in the political party to which they belong. David Hume articulated this danger with characteristic edge.<sup>23</sup> “Honour is a great check upon mankind: But where a considerable body of men act together, this check is, in a great measure, removed; since a man is sure to be approved of by his own party, for what promotes the common interest [of the party]; and he soon learns to despise the clamours of his adversaries.”

And so to the denouement. If meritocratic authorities are suitably appointed, constrained, and briefed so that they are subject to suitable sanctions and incentives, then there is every reason to expect that their attitudes will be indicative of the attitudes, on matters within their domain, of the population in general. Members of the public will want decisions in that domain to be taken according to the sorts of criteria listed earlier. And the basis on which the authorities are appointed, the constraints to which they are subject, and the briefs that they are given ought to combine to support a concern to live up to those standards.

#### V. THE ATTRACTIONS OF MERITOCRATIC REPRESENTATION WITHIN ELECTORAL DEMOCRACY

The argument so far suggests that if the conditions of appointment and performance are suitable – as, plausibly, they can be made to be – then the sorts of meritocratic authorities that figure in electoral democracies will count as indicative representatives of the people. It may be useful now to add a few remarks on the more obvious advantages of such representation in an electoral democracy.

The most obvious point to make in support of meritocratic, indicative representatives is that they promise to do a lot better in the sorts of offices envisaged than elected, responsive representatives would do.<sup>24</sup> If contestatory authorities had to seek election, then they would have an incentive to adopt policies in line with majority opinion and, ignoring the rationale for their existence, to neglect minority complaints. If adjudicative authorities had to seek election, then again they

would often have incentives to appeal to passing, popular sentiment, and the concerns of those who help them attain office, rather than to the strict requirements of the law. And if the various executive authorities listed were subject to electoral pressures, then in most cases, they would be tempted to neglect the benchmarks that ought by all accounts to guide their performance. Electoral commissioners would be pressed to favor the party that supports them in drawing constituency boundaries; central bankers would be motivated to appeal to supporters by promising congenial short-term policies; and of course any officials in charge of presenting or analyzing data would have an incentive to tailor things to the party or group on which they rely for election.

These considerations not only suggest that meritocratic authorities ought not to be elected but also that such officials ought indeed to be independent of those elected to office. They argue that democracy cannot rely on just the responsive credentials that elected representatives enjoy; it cannot live by election alone. Any government where things are reliably done in a manner that answers to the presumptive and legitimate expectations of the people must embody meritocratic representation.

There is a powerful tradition of thinking that the power enjoyed by meritocratic authorities represents a constraint on the power of the people and that it is essentially antidemocratic.<sup>25</sup> It is precisely because of opposing this tradition that I want to argue that such authorities can claim the status of popular representatives, indicative rather than responsive in character. The idea is that meritocratic authorities are not a means through which the people are thwarted but rather an essential part of the means through which the power of the people over government – this, rather than the power of a majority or indeed an elite – is most reliably ensured. Like elected authorities, they can claim in their area of expertise to speak and act in the people's name.

The category of indicative representative is not invented just for the purpose of supporting this claim about meritocratic authorities. As we saw, it applies equally with certain representative bodies. And, to add one further consideration, it is also required to make sense of the status of private individuals or movements that challenge government with underperformance or malfeasance in public forums and serve what by all accounts is a democratically important, contestatory role. These figures include the whistleblowers and complainants who expose abuses in public life or the individual citizens or watchdog bodies or nongovernmental organizations that challenge and expose the

unconstitutional or otherwise questionable character of certain laws or policies.

What gives such contesting parties – such private attorneys general – the right to speak,<sup>26</sup> as they generally claim to do, in the name of the people? They are indicative representatives who are subject to such constraints that they are bound to enact a brief, as we might think of it, that they are popularly assigned. The brief is provided implicitly in the fact that an approved constitution or set of conventions allows them to mount arguments in the courts or other forums against new laws and other decrees. The rationale behind the brief is to ensure that those in any potentially disadvantaged sector of society can be represented by one of their kind, or someone sympathetic to them, in challenging and testing the measures at issue. And those private attorneys general are more or less bound to enact their brief, and honor its rationale, by being required to follow established channels, arguing their case in a publicly accessible forum on publicly available and contestable grounds.

All of these remarks are designed to underline the acceptability and the merits of meritocratic representation in electoral democracies. But is there anything to be said on the other side? Are there dangers in giving meritocratic authorities the power that I have been envisaging for them?

The main danger springs from the fact that whereas elected, responsive representers remain subject to popular control, being constantly exposed to the possibility of being thrown out of office, meritocratic, indicative representers enjoy a potentially greater autonomy. Once installed in office, they are there for the duration of their term. Thus there is a constant danger of their becoming a law unto themselves, usurping the power of the people. The danger is manifest with the Supreme Court of the United States, for example, where judges are nominated by a president in one or another party, they enjoy tenure for life, and they are subject to few, if any, constraints from without. It is unsurprising that the judicial review that the Supreme Court practices has come in for trenchant criticism among political theorists.<sup>27</sup>

But if the danger of meritocratic authority is salient, so are the safeguards required. It is essential that the mode of appointment in any area of meritocratic authority, the constraints under which appointees operate, and the briefs to which they are bound, guard effectively against the usurpation of popular power. And because experience is essential for the testing of how well such safeguards operate, it is essential that that they can be periodically reviewed and adjusted in the light of



feedback. The American experience has clearly demonstrated that the system through which Supreme Court justices are appointed is flawed. It invites any would-be candidates for office to give themselves a party-political complexion and appeal, thereby reducing their credibility as impartial arbiters. And once installed in office, it leaves them there until their demise or until they voluntarily opt for retirement: it gives them power unlimited.

#### VI. THE PROBLEMS WITH MERITOCRATIC REPRESENTATION WITHOUT ELECTORAL DEMOCRACY

The need to establish, maintain, and revise the conditions under which meritocratic authorities operate raises the question of whether we can expect them to perform satisfactorily outside the context of an electoral democracy. That question is at the center of current discussion about political meritocracy, figuring in many of the other contributions to this book. I cannot hope to address the various points that have been made on different sides to that debate, but it may be useful if, in conclusion, I briefly rehearse some considerations that make a case in my mind for embedding meritocratic structures within an electoral frame. Just as meritocratic representation is required to guard against the dangers of electoral representation, so I believe that electoral is needed to guard against the dangers of meritocratic.

There are three considerations I would like to put on the table in support of this view, although I cannot properly expand on any and cannot register the points that others may make in response. The first is that it is hard to see how the issues surrounding appropriate modes of appointment, constraints of office, and official briefs could be satisfactorily debated and resolved, reopened and adjusted, outside an electoral context. The possibility of exploring those issues in electoral challenge, in debates between electorally responsive parties, and in the individual or group contestation that they invite is clearly useful for fine-tuning the requirements on meritocratic representatives. Could such fine-tuning be accomplished on a popularly supported basis – and credibly accomplished on such a basis – in the absence of a nonelectoral dispensation? Myself I doubt it, although I expect that debate will continue on that question.

The second consideration that moves me to think that meritocratic representation needs to be supported by electoral is that elected,

responsive representatives can themselves play an important role in contesting and checking the activities of meritocratic authorities. They can demand with effect that such authorities should properly explain certain judgments and decisions. And short of appearing to challenge the very regime under which such authorities exist, they cannot merely invoke party-political interest in making their demands. They will have to appeal to criteria of performance that are likely to be accepted as relevant benchmarks in the community as a whole. This consideration is no more conclusive than the first, because other bodies might serve a similar role: for example, the institution of Confucian intellectuals proposed by Jiang Qing.<sup>28</sup> But still it seems to me to carry some considerable weight.

The third consideration that I take to favor embedding meritocratic representation in an electoral context involves the notion of legitimacy and takes us back to an observation made at the beginning of the chapter. The authorization of individuals in a representative role, so we saw, raises two questions. First, the issue of whether the selection was made legitimately: that is, by a suitable agency, operating under suitable rules. And second, the issue of whether it was suitably motivated, being grounded in the eligibility for a representative role of the candidates selected. We have seen that representative eligibility may consist in the responsive or indicative status, existing or expected, of those candidates. But what is needed to establish the legitimacy with which the candidates are put in representative office? I suggest that electoral democracy may have to play an indispensable part.

This issue of legitimacy takes us into deep waters and I must deal with it in too brief a compass. Government authorities impose coercively on people, in the nature of the case. And so, in looking at such authorities, we may not only ask about how well they perform in office, by whatever criterion of performance is supposed, but also about whether they have a legitimate claim to office that trumps that of others. A legitimate claim to office would entitle them to our acceptance, even when things are not going so well. It is important that authorities have such a claim because otherwise every downturn in the country's fortunes would argue, other things being equal, for revolution and regime change.

Authorities who are elected under a periodic, competitive, egalitarian system of election – and actual democracies often fail to satisfy such conditions properly – have a good claim to be legitimate officeholders. And unelected authorities who are appointed by those so elected, under an open, contestable system of appointment, have an equally good claim to hold office legitimately. But how is legitimacy going to be

established in the absence of election? In particular, how is it going to be established for unelected figures like the meritocratic authorities on whom we have been focusing here?

The meritocratic philosophy, developed in different ways in other contributions to this book, has an answer to that question. The core claim, as I understand it, is that legitimacy is going to be established under broadly two conditions: first, that those in office are meritorious in a relevant way – suitably talented and virtuous; and second, that they are selected over others on the basis of that merit. But I see two problems with that proposal as a theory of legitimacy, and I conclude with a brief mention of these.

The first problem is that it is hard to see what feasible system of selection might pass muster as reliably meritocratic: reliably capable of selecting the talented and the virtuous. The ancient system of examinations to the mandarin state may have worked well as a way of selecting the talented and it could presumably be resurrected in today's world. But could any such impersonal system be relied on to select for virtue as well as talent? I don't see how it could. That suggests that we have to rely on a system that leaves room for more personal assessments of the candidates. Any such system, however, would have to depend on interviews and testimonials and, ultimately, personal relationships. And it is hard to see how it could command the credence of the population at large, convincing them that it operates without bias or favor. There may be cultural differences in this respect between East and West, as some have suggested, arguing that credence is more readily forthcoming in the East. But, without being an expert on such cultural matters, I am not convinced that they are as deep as they would have to be to settle my concerns.

The second problem that I see with the antielectoral meritocratic proposal relates to the claim of those actually selected to be truly meritorious. If a system establishes the legitimacy of officeholders, it ought to establish their legitimacy even in the event that they do not apparently do so well in office: even in the event, for example, that the economy takes a downturn. An economic downturn in an electoral democracy would not necessarily jeopardize the claim of the authorities to legitimacy; it would put a question over their abilities and efforts instead. But a downturn in a pure meritocracy would surely suggest to many that those in office are not actually meritorious – not suitably talented or not suitably virtuous – and would therefore raise a question about their legitimate claims to office. I think that it is important that legitimacy should not be tied in this way to performance, because it is required to

motivate popular acceptance of those in office, regardless of how well or badly they actually perform. On this front I am not convinced that the meritocratic philosophy offers a satisfactory account of legitimacy.

The main argument of this chapter has been that not all those who can legitimately claim to represent us need to be elected. But it may still be the case, as these final remarks suggest, that some of our representatives have to be elected if those who aren't elected can credibly claim to be legitimate representatives. These last remarks are all too brief, however, and open up a new discussion at the same time that they close down the discussion pursued here.<sup>29</sup>

NOTES

1. Under Thomas Hobbes's theory of political representation (see Thomas Hobbes, *Leviathan*, E. Curley, ed. [Indianapolis, IN: Hackett Publishing Company, 1994]), to cite a contrasting alternative, authorization involves the individual acquiescence of all representees; this is not as demanding as may first appear, however, because submission under duress can count as voluntary acquiescence. Under this theory all that is required to make a candidate eligible for the role of political representative or spokesperson, be that candidate an individual or body, is the capacity to discharge the duties of a sovereign, see P. Pettit, *Made with Words: Hobbes on Language, Mind and Politics* (Princeton: Princeton University Press, 2008).
2. H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972).
3. See P. Pettit, "Varieties of Public Representation," in *Representation and Popular Rule*, Ian Shapiro, Susan Stokes and E. J. Wood, eds. (Cambridge: Cambridge University Press, 2009); P. Pettit, "Representation, Responsive and Indicative," *Constellations*, vol. 3 (2010), pp. 426–34; and see J. Mansbrige, "A 'Selection Model' of Political Representation," *Journal of Political Philosophy*, vol. 17 (2009), pp. 369–98.
4. P. Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012).
5. E. Sosa, *A Virtue Epistemology* (Oxford: Oxford University Press, 2007).
6. Q. Skinner, "Hobbes on Representation." *European Journal of Philosophy*, vol. 13 (2005), pp. 155–84; M. B. Vieira and D. Runciman, *Representation* (Cambridge: Polity Press, 2008).
7. D. Waley, *The Italian City-Republics*, 3rd ed. (London: Longman, 1988); M. H. Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford: Blackwell, 1991); O. Dowlen, *The Political Potential of Sortition* (Exeter: Imprint Academic, 2008).
8. J. Abramson, *We, the Jury: The Jury System and the Ideal of Democracy* (New York: Basic Books, 1994).
9. It is significant that a supporter of the anti-Federalist cause in 1787 could complain that in the enlarged United States there would not be a representative body in legislature or jury "which possesses the same interests, feelings,

- opinions, and views the people themselves would were they all assembled,” see R. Ketcham, ed., *The Anti-Federalist Papers* (New York: Signet Classic, 2003), p. 265.
10. Skinner, op. cit., p. 163.
  11. Ketcham, op. cit., p. 342.
  12. H. F. Pitkin, ed., *Representation* (New York: Atherton Press, 1969), p. 77.
  13. J. S. Mill, *Considerations on Representative Government* (London: Everyman Books, 1964).
  14. T. Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder: Westview Press, 1996).
  15. A. Rehfield, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge: Cambridge University Press, 2005).
  16. J. Stewart, E. Kendall, and A. Coote, *Citizens’ Juries* (London: Institute of Public Policy Research, 1994).
  17. J. S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1997).
  18. Y. Sintomer, *Le Pouvoir au peuple: jurys citoyens, tirage au sort et démocratie participative* (Paris: Edition la Decouverte, 2007).
  19. M. E. Warren, and H. Pearse, eds., *Designing Deliberative Democracy* (Cambridge: Cambridge University Press, 2008).
  20. Because everything is a perfect indicator of itself, a limit case of indicative representation is the participatory democracy in which the whole population is present to vote, not just a sample. Far from being cast as the contrast point for indicative representation, the compulsory, participatory arrangement can be seen as a special case. The case is so special, however, and so infeasible, that I ignore it in this discussion.
  21. B. Constant, *Principles of Politics Applicable to All Governments* (Indianapolis: Liberty Fund, 2003).
  22. G. Brennan and P. Pettit, *The Economy of Esteem: An Essay on Civil and Political Society* (Oxford: Oxford University Press, 2004).
  23. D. Hume, *Political Essays* (Cambridge: Cambridge University Press, 1994).
  24. P. Pettit, “Depoliticizing Democracy,” *Ratio Juris*, vol. 17 (2004), pp. 52–65.
  25. W. Riker, *Liberalism against Populism* (San Francisco: W. H. Freeman, 1982).
  26. J. A. Rabkin, “The Secret Life of the Private Attorney General,” *Law and Contemporary Problems*, vol. 61 (1998), pp. 179–203.
  27. J. Waldron, *The Dignity of Legislation* (Cambridge: Cambridge University Press, 1999); J. Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999).
  28. J. Qing, *A Confucian Constitutional Order: How China’s Ancient Past Can Shape Its Political Future* (Princeton: Princeton University Press, 2012).
  29. I was helped in revising this chapter by the marvelous discussion of this and other papers at the Singapore conference in January 2012; by the remarks of my commentators at the conference, Ian Chong and Chin Liew Ten; and by a searching set of queries and challenges from Daniel Bell.

PROOF

## SECTION II

### The History of Political Meritocracy

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