

[*Note to readers:* In the passage of a day, many of the concerns of this paper have become dated in ways that I could not have imagined. The concern about “worse outcomes” now towers over everything else. The concerns about abuse of the filibuster or money buying elections now look quaint. (“If only,” part of me wants to say.) Philosophizing about politics feels absurdly trivial. At the same time, contributing even in tiny, inevitably flawed ways to the more general enterprise of free, reasoned inquiry feels more urgent than ever.—N.K., 11/9/16]

### *Democracy for Idealists*

Recent observers,<sup>1</sup> file dismayed, and dismaying, reports of ills afflicting democracy: more precisely, afflicting, in the case of United States, those specific aspects of democracy that have to do with the relation of opinion and votes to office and policy. To be sure, democracy has other, no less important aspects, such as civil liberties and the rule of law. The “idealist” of my title grants that things are as these (sometimes self-styled) “realists” report, and she shares the dismay. Yet she asks why she is, or anyone should be, dismayed. Presumably, the ills are ills because they contravene certain values or ideals. Our idealist isn’t naïvely hopeful, or uncompromisingly perfectionistic, about realizing the ideals. She is just interested in clarifying what the ideals are.

Drawing, in part, on earlier work (Kolodny 2014a, b), I try to articulate and assess different possibilities. I don’t reach any tidy conclusion—at least not unless you count the following as tidy (or a conclusion). We can identify several values that explain why many of the ills are ills. All the same, these values, even when taken together, don’t explain why all of the ills are ills. So we are left (or at least I am left) with an unease not easily explained.

#### *The ills*

I begin by listing the ills. 1. *Vote suppression*: Certain barriers make voting costly or difficult—at the limit, impossible. They are higher, often by design, for certain ages, races, ethnicities, and income levels. Examples are voter ID laws, limits on early voting and late registration, long wait times at polling places, and disenfranchisement for certain criminal convictions. Such measures appear to be resurging after, first, the 2010 election gave Republicans control of many state legislatures and, second, *Shelby County v. Holder* in 2013 weakened the prophylactics that the Voting Rights Act of 1965 had set against such barriers.<sup>2</sup>

2. *Status-quo bias*: Changing policy<sup>3</sup> is harder than keeping it. Some status-quo bias is due to supermajority requirements. Some such requirements are recent developments, with no constitutional basis, such as the filibuster.<sup>4</sup> Some status-quo bias is due instead to the difficulty

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<sup>1</sup> Foremost in mind: Achen and Bartels 2016, Bartels 2016, Daley 2016, Gilens 2012, Gilens and Page 2014, Hacker and Pierson 2010, 2016, Mann and Ornstein 2016, Pildes 2014, Wang 2016.

<sup>2</sup> The decision struck down the act’s “coverage formula” for “preclearance,” which specified that certain states and localities, due to histories of discrimination, needed prior federal approval for changes in voting rules.

<sup>3</sup> “Nominal” policy, that is. Keeping “nominal” policy may well mean “real” changes. The purchasing power of the minimum wage may erode, or temporary tax cuts may expire.

<sup>4</sup> A filibuster in effect requires 60 Senators, out of a chamber of 100, to agree to end debate on most bills and some appointments. Use of, or anticipation of, filibusters has become much more common over the past few decades.

of reaching agreement among different bodies, often controlled by different parties (“gridlock”), or reaching agreement among factions within parties over which leadership has diminished influence<sup>5</sup> (Gilens 2012, Hacker and Pierson 2010, 2016, Mann and Ornstein 2016, Pildes 2014). And some status-quo bias seems endemic to centralized decision-making. Changing policy simply demands more of scarce resources, such as time and attention (Baumgartner et al. 2009).

3. *Formally disproportionate representation*: The ratio of one district’s representation—understood as its voting power in the relevant body (e.g., the size of its Senate delegation)—to its population is greater than that of another district (e.g., Wyoming vs. California or Puerto Rico).

4. Even formal proportionality, however, does not rule out: (A) *Substantively disproportionate representation*: The share of representation (e.g., representatives preferred by whites but not blacks) of some relevant group in the relevant body (e.g. a state’s congressional delegation) is greater than the share of relevant constituents in that group (e.g., voters in the state who cast ballots for white-but-not-black preferred representatives). (B) *Persistent minorities*: A more or less fixed group is reliably outvoted. Often, when this is so, elections are *uncompetitive*: reliably won by large margins. (C) *Gerrymandering*: Districts are drawn so as to advantage a particular incumbent or group (and not as a remedy for some objectionable disadvantage) (Daley 2016, Wang 2016). Some substantive disproportionality is due to gerrymandering, as when, for example, Republicans draw a few districts in which Democrats will win by huge margins, with many (still equipopulous) districts in which Republicans will win by smaller, but still comfortable margins. However, some substantive disproportionality has other causes: e.g., that Democrats, on average, reside closer to one another than do Republicans. Similarly, some persistent minorities result from gerrymandering, as when a Democratic incumbent sees to it that her own district contains a reliable majority of Democratic voters. But not all persistent minorities do.

5. *Polarization*: Officials are “further out” on the “ideological” extremes of left and right, in two senses. (A) Officials are further out *relative to their constituents*. This is suggested by the finding that representatives and Senators from districts with similar constituencies vote differently if they belong to different parties (Bartels 2016 233–9). (B) Officials are further out *relative to otherwise comparable officials in the past*. In particular, *Republicans are a lot further right and a lot more consistently so* (Mann and Ornstein 2016). Although to some extent the product of realignment of the white South toward the Republican Party after 1964, this has been exacerbated by the gerrymandering of safe Republican congressional seats after 2010. Now the only electoral pressure on many incumbents is a primary challenge from the right (Daley 2016).

6. *Money in campaigns*: More money is spent on elections and referenda, while restrictions on campaign finance and expenditure, and systems of public funding, have been struck down, weakened, or opted out of.

7. *Special interests*: Interest groups, often via professional lobbyists, have, in some sense, excessive access to, or influence over, the decisions of officials. Moreover, the decline of private-sector unions, among other things, has changed which interests have access or influence.

8. *Gilens’s findings*: Say that policy is more “Gilens-responsive” to a group at a time to the extent that an increase in the *proportion* of that group preferring at that time that a policy be *adopted increases the probability* that it is later adopted. Gilens 2012 finds that not only is federal policy more Gilens-responsive to the affluent than to other groups, but it is not at all

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<sup>5</sup> Arguably, due to term limits, loss of control over committee assignments, and avenues for fundraising that bypass party leadership.

Gilens-responsive to the non-affluent when preferences diverge from the affluent. What's more, the fact that policy is more Gilens-responsive to the affluent appears not to be much explained by education, information, voting, or contact with officials. The culprit may simply be that the affluent donate more money to campaigns (Gilens 2012 Ch. 8, Bartels 2016 257–68).

9. *Arbitrary voting*: Negatively, Achen and Bartels 2016 argue that votes tend *not* to be influenced by voters' policy preferences, "ideology," or ("real" or "perceived") interests. Positively, they argue that votes are systematically<sup>6</sup> influenced by the three factors. (A) *Myopic retrospection*: The rate of income growth in last two quarters before the election. (B) *Partisan affiliation*: Membership in a formal political party. (C) *Group identity*: Belonging to a race, gender, ethnicity, or religion.<sup>7</sup>

Factors (B) and (C) beg comment. Why, one might wonder, should we *contrast* a vote for one's party with a vote for one's policy preferences, ideology, or interest? Granted, the party's stance may diverge from one's policy preferences, ideology, or interests in this particular, or here and now. But supporting the party, despite that, seems a reasonable strategy for advancing one's policy preferences, ideology, and interests in general, or over the long run. Political success requires team play, coalition building, and tactical sacrifice. Moreover, one's party's support for a particular policy may provide one with evidence that the policy aligns with one's preferences, ideology, or interests, given that the party usually supports policies that so align. However, Achen and Bartels present evidence that people vote for their party not on such instrumental or evidentiary grounds, but instead because their party affiliation influences their (i) beliefs about economic and social conditions and the effects of (even recent) policy, (ii) beliefs about which policies the parties support, and (iii) broader preferences for policy (285). Voters who know more *in other respects* may actually be *more* susceptible to such influences, since they also know *the party line* better (Bartels 2016 130–1).

Similarly, one might wonder why we should contrast a vote influenced by one's group identity with a vote for one's policy preferences, interests, and ideology. Indeed, as an admitted lay reader, I find the contrast elusive. Some examples: (i) Many of Achen and Bartels's examples are of voters who belong to ethnic, religious, or racial groups who are vulnerable to subordination or marginalization: Jews, blacks, and Asian-Americans. Even factoring in the risks of pandering and "identity fraud," it seems sensible enough for a member of such a group to expect an official from the same group (309), or at least an official or party that openly expresses less hostility to that group (238), to be, well, like, less hostile to that person's policy preferences, interests, and ideology. All the more so if, reasonably enough, that person's policy preferences, interests, and ideology partly consist in the recognition of members of her group as equals. (ii) If women's votes are more responsive than men's votes to stances on abortion (260), why attribute

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<sup>6</sup> They also cite some less systematic influences: sundry events that elected officials cannot plausibly be thought to control, such as droughts and shark attacks; unjustifiable fears about the effects of policy (such as of fluoridated drinking water); and superficial differences in framing or effects of policy (such as whether voters' personal finances are worsened via higher taxes or higher insurance premia). Some statisticians dispute the shark business, however.

<sup>7</sup> Of course, one might like a more general definition. The closest thing I can find is: membership in a group "central to [a person's] self-concept" (228). But this definition isn't met by the illustration, in the very next paragraph, of a Northern-Irish atheist who is presumed to have a group identity as a Protestant or Catholic, even though, evidently, this is not important to his "self-concept" (even as an "emotional attachment that transcend[s] thinking").

this to “group identity,” as opposed to simply having more profoundly affected interests? (iii) It seems to slice things pretty finely to argue that Southern realignment was driven not by an ideology of “racial animus,” or by opposition to policies to address the legacy of slavery and Jim Crow, but instead by group identification as a “white Southerner,” who supports the party of “white supremacy” (252). (iv) Although of course Achen and Bartels do not discuss it in their book, and although it’s an empirical question, it seems that Trump’s nativism and racism attracted more votes than it repelled. But then this racism and nativism was expressed in proposed policies—indeed, policies that, by his standards, were comparatively concrete.

So that’s the list of ills. I don’t expect it to get high marks for taxonomical hygiene. Some of the ills are hard to distinguish, even in theory, from one another. Even when they can be distinguished in theory, they amplify one another in practice. For example, money in campaigns may contribute to disparities in Gilens-responsiveness. Gerrymandering intensifies polarization, which, by putting agreement out of reach, in turn exacerbates status quo bias.

At the same time, it’s also worth noting that some of these ills appear to mitigate others, in ways that those sounding the alarm don’t discuss. For example, to the extent that myopic retrospection holds, shouldn’t we expect that differences in campaign spending won’t influence elections, simply because we shouldn’t expect such differences to affect the rate of income growth? Similarly, to the extent that group identity and party affiliation are as insulated from persuasion as Achen and Bartels 2016 suggest, and to the extent that people vote on the basis of group identity and party affiliation, shouldn’t we expect voting to be less sensitive to campaign spending? For these reasons, it’s a bit puzzling why they stress limiting money in campaigns as a chief remedy for the arbitrary voting behavior that they identify (327).

I ignore some other ills, often mentioned in the same breath. In part, this is from (too rare) mercy for my reader. The list is already overly long. In part, these other ills have less to do with those specific aspects of democracy that are this paper’s focus. For instance, the benefits of political order (simply in terms of what I will call below “better outcomes”), even in non-democratic regimes, derive from its being known that people will follow certain procedures that resolve disagreement and achieve coordination without excessive cost (e.g., bloodshed or soaring bond rates). These procedures are bound to outrun explicit codification, requiring some shared understanding of things that just aren’t done. Much of the anxiety about status-quo bias and polarization in the reports that I have in mind may be anxiety that old understandings have decayed, and that new understandings either have not taken root or carry needless risk. Whereas once it went without saying that one didn’t take hostages—a depopulated judiciary, default on the federal debt—it is becoming routine (Hacker and Pierson 2016, Mann and Ornstein 2016).

### *Worse Outcomes*

So why are the ills ills, if they are? The no-nonsense answer is: Because they lead to bad outcomes—or, rather, worse outcomes than some relevant alternative. Outcomes are “better,” I’ll say, when there is a fairer (or otherwise desirable) distribution of the satisfaction of “substantive” interests.<sup>8</sup> I define these negatively, as interests neither in the coincidence of policy with preference as such, nor in the influence of choices over policy as such. Still, “substantive” casts a wide net, catching such diverse interests as those in security, employment, freedom from infectious disease, fair treatment in courts of law, and much else.

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<sup>8</sup> Needless to say, it is also important that these outcomes be brought about in a way that respects whatever rights may constrain the means that we take to bring those outcomes about.

Many claims to the effect that such and such ill leads to worse outcomes strike me, at first, as unassailable. As I think them through, however, doubts creep in. It's not just scanty data. It's hard even to frame the hypothesis. How specifically are we describing the ill? Which alternatives are counting as relevant? Which conditions are we holding fixed? Over what span of time are we making the comparison?

Some illustrations of confidence undone: As I started Gilens 2012, my reaction (as someone with left-of-center views of the kind that one encounters in the upper floors of Moses Hall) was: "Yikes! Surely things would be better if policy were more responsive to the preferences of the non-affluent."<sup>9</sup> Granted Gilens 2012 presents evidence that greater Gilens-responsiveness to non-affluent preferences would lead to, say, a higher minimum wage. But he also presents evidence that it would lead to more restrictive abortion policy. And was I implicitly thinking that things would be better if policy was more Gilens-responsive to the electorate as a whole? Not at all clear. Gilens-responsiveness to the electorate as a whole was lowest with (Lyndon) Johnson's domestic policy (due in no small part to opposition to immigration reform) and highest in first second Bush administration (Ch. 7). In a similar vein, Bartels 2016 notes that unresponsive political "elites" long held the line against majority preferences for estate tax repeal (Ch. 6).

Likewise, as I started Achen and Bartels 2016, my reaction was: "Yikes! Surely, arbitrary voting makes things worse." Yet what was I thinking? Perhaps: "Let's take voting behavior as a given. It turns out that it is arbitrary. Therefore, some relevant alternative procedure in which voting has (in some sense) less influence over policy than it has now would lead to better outcomes." But then why did I assume this? To paraphrase Churchill, what faith do I have that some alternative would fare better?<sup>10</sup>

Or perhaps I was thinking: "Let's take it as given that voting influences policy as it does. Therefore, if voting was less arbitrary, outcomes would be better." Granted, it's hard to see how *less myopic* retrospection—voting on the basis of income growth not over the last two quarters but instead over, say, the last twelve—could produce *worse* results. But why assume that a higher correlation of votes with specific policy preferences, and a lower correlation of votes with party affiliation, would lead to better outcomes—especially if parties help to craft informed, coherent, workable packages of policy?

Moreover, why did I consider less arbitrary voting a *relevant* alternative? After all, it is not clear that less arbitrary voting is something that a suitable "we" could bring about, at tolerable cost. Among the sources of arbitrariness may well be deep-seated tendencies in the human psyche: to trust people like ourselves, to be distracted by salience, to shun cognitive dissonance, to gravitate toward confirming or reassuring evidence, and so on. Guarding against these tendencies often requires intensive training, structure, and reinforcement, even in highly focused, regimented, professional contexts. Why be optimistic about the returns to similar efforts in the all-things-considered, freewheeling, unblushingly amateur context of voting?<sup>11</sup>

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<sup>9</sup> A view Gilens both encourages and discourages, sometimes in the same paragraph (2012: 3).

<sup>10</sup> Granted, the discovery that people vote arbitrarily reveals that arguments of the form, "Given that people don't vote arbitrarily, the alternative would not lead to better outcomes," rest on a false premise. But that's a more limited point.

<sup>11</sup> Of course, even if it's not possible, without prohibitive cost, for the relevant "us" to do anything about how an arbitrary voter, Arby, votes, it might still be possible, without prohibitive cost, for Arby to do something about it. If so, things might be better if Arby did something about

To be sure, I agree, even on reflection, that some of the ills are ills because—describing the ills concretely, taking things as they are, sighting the near horizon—the ills have led, and can be predicted to lead, to worse outcomes. But I think this for, in some sense, “partisan” reasons. The simple fact is that many of the ills enhance the power of the political right. Voter suppression and disproportionate representation favor Republicans. So too may money in campaigns and myopic retrospection (Bartels 2016 Ch. 3). And Republican control (at least since the exit of progressives like Nixon) has had significantly worse outcomes than Democratic control would have had, and increasingly worse outcomes as polarization has intensified.

In any event, many suggest that the ills are ills because they depart from an ideal of democracy that is independent of any tendency toward promoting “substantive” interests, again distinct from interests in influence over policy or in the coincidence of policy with preference. And the suggestion resonates. Concern about the rise in economic inequality since the 1970s, for example, is not just about “substantive” matters of unfair division or absolute deprivation, but also about the risk to democracy (e.g., Krugman 2011). The rest of this paper asks what sense can be made of this suggestion. Are the ills somehow failures of democracy itself?

### *Unresponsive Policy*

The alarm sounded perhaps most often is that the ills reflect, or bring it about, that policy is insufficiently “responsive.” Policy is “more responsive” at a time, let us say, simply to the extent that, on each given policy question, the policy preferred by a majority (or, alternatively, plurality) of the electorate at that time obtains.<sup>12</sup> Indeed, unresponsive policy seems implicated in almost all of the ills. (1) Had suppressed votes been cast, they might have brought about policy responsive to the preferences of morally relevant electorate: namely, an electorate including the suppressed. (2) Status-quo bias thwarts responsiveness when a majority prefers a change in policy. (3, 4) By diminishing the representation of the majority, disproportionality makes it less likely that the majority’s preferred policies are enacted. (4, 5) Polarization and lack of competition push policies further from the center, where, arguably, most preferences lie. (6) If outspending the opposition improves the chances that a favored candidate or proposition wins, then outspending majorities may thwart majority preferences. And if candidates so much as believe that outspending the opposition improves their chances, they may be induced not to support, or even to oppose, the majority’s preferred policy in order to attract such spending. (7) If special interests influence policy, and if special interests oppose majority preferences (Gilens and Page 2014: 570), then this again may thwart majority preferences. (8) If policy is more Gilens-responsive to the affluent, and if the affluent are fewer, then this may make policy less responsive in the present sense. Last, (9) arbitrary voting dampens responsiveness in referenda and doubly in elections. If people do not vote on the basis of their policy preferences, then not only are they less likely to elect officials predisposed to pursue policies that they prefer, but also they are less likely to pressure those officials, by their threat of removal, to pursue such policies.

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it. (Indeed, Arby may wrong the rest of us by not doing something about it.) But is this to say more than that the world would be better if people were better: to ink one more entry in the long ledger of the wages of human frailty?

<sup>12</sup> The fact that policy is not responsive does *not* imply that policy does not depend on which party holds office: that “elections don’t matter.” Even if the policies enacted by Democrats and Republicans are equally unresponsive to citizen preferences, they may still differ markedly. There’s more than one way to ignore the People.

But why might unresponsive policy matter (again, bracketing any tendency to worse outcomes)? The most straightforward answer rests on two ideas. First, each of us has an interest in the satisfaction of his or her policy preferences as such. Second, insofar as policy is responsive, the satisfaction of this interest is fairly distributed.

I don't think this answer can be correct. Too briefly put, I doubt we have an interest in the satisfaction of our preferences as such. To be sure, our (informed) preferences may be reliable *indicators* of what is in our *substantive* interest. But that's a different matter. Moreover, even if we had an interest in the satisfaction of our preferences, it would be arbitrary to focus on distributing the satisfaction of *political* preferences in *isolation* from other preferences. And even if we restrict ourselves to political preferences, it still seems arbitrary to focus on distributing the satisfaction of preferences for *policy* in isolation from other political aims.

Furthermore, when a person's policy preferences conflict instrumentally, how are we to say what satisfies those preferences overall? Suppose Preferson prefers policy M because he prefers policy E and mistakenly believes that M is a means to E, when M in fact undermines E. Does enacting M satisfy Preferson's policy preferences or not? If we say "No"—that is, if we say that preferences for policy ends trump preferences for policy means—then why not conclude that Preferson's preferences are satisfied just by satisfying his interests overall, or, if he's public spirited, by realizing better outcomes? After all, there is something to the Socratic thought that those are the "policy objectives" that Preferson ultimately prefers. If, on the other hand, we say "Yes"—that policy M "other things equal" satisfies Preferson's preferences—then one despairs of saying what satisfies his preferences overall.

Something similar goes for conflict over time. Suppose that, in year 1, Preferson prefers P (e.g., that freedom endures in Iraq) in year 2, whereas, in year 2, Preferson (e.g., having come to see how untidy freedom can be) opposes P in year 2. Do both preferences count? Does each preference count for as long as it is presently held? Does the later preference override the earlier preference? (Why? Because the later preference is better informed? But it needn't be. And, as we ask below, why should information matter?)

Even granting that we have an interest in the fulfillment of our policy preferences, why suppose that insofar as *policy is responsive with respect to each policy question, the satisfaction of these interests will be fairly distributed among people*? For one thing, when there are persistent minorities, responsiveness will not give *their* members fair shares of preference satisfaction. For another, responsiveness is insensitive to the "intensity" of preference. Yet one might think, to the extent that one enters empathetically into the relevant mindset, that intensity ought to bear on whether the distribution is fair. For yet another, there are two routes to seeing to it that policy matches Preferson's preferences. Either policy can adjust to his preferences, or he can revise his preferences. If Prudence gave Preferson the second route, furnishing him with sound, accessible arguments to revise his preferences, why should he continue to have a claim on Prudence to give him the first route: namely, adjusting policy? Even if policy is not responsive to his preferences, Prudence might say, this isn't unfair to him. She did *her* part.

On reflection, one might have wondered from the start whether unresponsive policy, in our sense, could capture all that dismays us. For anxiety about unresponsive policy is often joined with anxiety that even when policy satisfies preference, preferences may not be *informed* (Gilens 2012 12). But why should information matter for the satisfaction of preferences as such? Uninformed preferences may be poor indicators of substantive interest, but again that's a different issue. More tellingly, perhaps, anxiety about unresponsive policy is often joined with anxiety that even when policy satisfies preference, policy may not be *caused* by preference

(Gilens 2012 66–9). But why should causality matter for the satisfaction of preferences as such? As Gilens and Page 2014 caution, their “evidence does *not* indicate that... the average citizen always loses out”; indeed “ordinary citizens,” while impotent, “often win” (572–3).

Indeed, this anxiety about causality gestures toward a different democratic ideal: not the *satisfaction of the People’s policy preferences*, but instead *the People’s control over policy*. And this ideal, in turn, suggests a different answer to why the ills are ills. The ills bring it about, or indicate, that *opportunity for influence* over political decisions is not *appropriately distributed*. What matters is not quite the distribution of influence *itself*, but instead, as Cohen 2001 stresses, the distribution of *opportunity* for influence.<sup>13</sup> The reasons for this focus on opportunity will become clearer as we proceed. The first question, though, is why anything in the vicinity of the distribution of influence should be thought to matter.

### *Insult*

The distribution of influence might first be said to matter as a symbol. It objectionably expresses (or encourages) a negative judgment about Minor to deny her as much opportunity for influence as others enjoy. It is Minor’s opportunity, not actual influence, that matters, simply because *others* don’t insult her if *she* chooses not to exercise an opportunity that she nonetheless has.

What, though, is the insult? It’s no doubt objectionable to express that Minor’s *interests of kind K* (e.g., substantive interests) *are less important than others’ K-interests*. Yet what expresses this judgment, one might have thought, is a procedure that serves her K-interests less well. And such procedures are *already* open to objection on that count: namely, that they serve her K-interests less well. While this insult may add, well, insult to this underlying injury, it can’t explain why ills not already open to that objection are ills.

The insult can’t be that, *as things are now, Minor would make inferior political decisions*. Messages to that effect are left, right, and center in our public culture, without being, as a rule, objectionable. Perhaps, though, the insult can be that her *native capacity for commonsense judgment about political matters* is inferior. That may well be objectionable, especially when this alleged inferiority is attributed to her gender or race. And some deprivations of influence express such an insult. Even granting the dubious<sup>14</sup> claim that current efforts at vote suppression are solely for partisan advantage, their locales and tactics echo, too loudly and too clearly, historical efforts that were in more or less declared service of a doctrine of racial superiority.

However, not all deprivations of, or failures to protect, equal influence, even when intentional and manifest, express that anyone’s judgment is inferior. For example, the line of decisions epitomized by *Citizens United*, which have struck down limits on campaign finance and expenditure, may well express an objectionable lack of concern about superior influence of the very wealthy. But these decisions don’t express, as far as I can tell, the judgment that others are inferior decision-makers—only that the contemplated restraints of political speech are intolerable. Moreover, other deprivations of or failures to protect equal influence are neither intentional nor manifest to anyone (at least prior to painstaking research).

One might reply that even unintentional and unknown deprivations of, or failures to protect, equal influence are at least negligent. This negligence is wrong because it expresses that

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<sup>13</sup> For brevity, though, I will from time to time omit “opportunity for.”

<sup>14</sup> Given Republican dominance in Alabama politics, for example, what further partisan advantage could they hope to gain from voter-ID laws? Nostalgia may be a more likely motive.

those deprived, or unprotected, are not *equal citizens* or *full members of the political community*. But this reply faces a dilemma. It's either implausible, or presupposes what we want to explain.

It's implausible, I think, that equal influence is no more than an accidental badge of citizenship otherwise conceived. On that view, why shouldn't the women's suffrage movement have been sufficiently reassured by the clarification in *Minor v. Happersett* that, although of course it implied nothing whatsoever about their right to vote, women were without question no less citizens than men? More plausible is the suggestion that, whatever other conceptions of citizenship there might be, women like Virginia Minor had a valid claim to citizenship conceived in such a way that depriving her of equal influence expressed disregard for that claim. But conceived in what way? For the reasons given earlier in this section, we can't answer: "having substantive interests," or "having political commonsense." Instead, we seem pressed to build a claim to influence into the relevant conception of citizenship. But then explaining why Minor has a valid claim to *that* sort of citizenship seems to require explaining why she has a valid claim to influence, which is what we set out to explain. Moreover, once we explain why she had a valid claim to *influence*, complaints about what disregard for that claim *expressed* seem secondary. Her primary complaint is just that she didn't get what that she had a claim to.

#### *A means to political activity*

Setting aside the possibility that influence matters as a symbol, let us consider the possibility that influence matters as a means. The value of many activities depends on their flowing from the agent's choices, which in turn flow from her informed, autonomous judgment. Such "choice-dependent" activities include marriage, religion, and work (at least on certain conceptions). Accordingly, we have an interest in such influence, as a means to these activities.

If an interest of ours supports a claim on others, it's usually not a claim to the *actual satisfaction* of the interest, but instead a claim to a *fairly distributed opportunity* to satisfy it. (Recall Prefferson's claim on Prudence.) In some cases, the reason is technical and unromantic. A system that asked us to contribute nothing to satisfying our own interests would simply serve our interests less well overall. For example, if the government had to do all of the work of identifying who might benefit from a given program, this work might exhaust its budget, with the result that the program couldn't be offered to anyone. So our interests are better served overall by a system that asks prospective beneficiaries to do the work of identifying themselves (e.g., by enrolling or applying). In other cases, the reason is that satisfying our own interest is part of what we have an interest in. For example, no one else can arrange for you a non-arranged marriage. The same goes for other choice-dependent activities. For either reason, therefore, we have a claim on others to a fair opportunity to satisfy our interests in choice-dependent activities.

How does this bear on democracy? Among these choice-dependent activities is (blandly put) "political activity": freely forming one's convictions (often by confrontation with the reasoning and convictions of others) and knowingly bringing those convictions to bear on political decisions (often by trying to get others to change their convictions) (Cohen 2001: 72–3; Dworkin 2002: 202–3).<sup>15</sup> The value of political activity might be conceived more individualistically: such as fulfilling one's religious obligation to stand up for the downtrodden.

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<sup>15</sup> Note that it isn't enough to cite the value of *forming* convictions about policy. One can have ample, fully resourced opportunity for forming convictions about policy without any opportunity to *influence* policy in light of those convictions. Much of our political thought is about the policies of other eras or jurisdictions.

Or it might be conceived more collectively: such as contributing to a joint project of the People's self-government (in the way in which playing a position, or an instrument, is a contribution to the joint project of playing on a team, or performing an orchestral piece). Either way, we each have an interest in informed, autonomous influence over political decisions, as a means to political activity. So we each have a claim to fairly distributed opportunity for such influence. Democracy distributes such influence fairly among us.

This is surely one ground for concern about “undemocratic” distributions of opportunity of influence over political decisions. But I wonder whether it is the only such ground. The trouble is that a *fair* distribution of opportunity *to satisfy interests in political activity* need not be an *equal* distribution of opportunity *to influence political decisions*. And yet, for many, the democratic ideal seems to be an ideal of equality.

How can opportunity to satisfy interests in political activity be distributed fairly, but unequally? Let's illustrate the point with respect to “informal” opportunity, although, in principle, it might be illustrated with respect to “formal” opportunity too. The contrast between “formal” and “informal” opportunity is something like Rawls's (albeit itself rather gestural) contrast between a “liberty”—constituted by what the structure of rules directly permits or empowers one to do, or protects one in doing (e.g., the absence of criminal penalties for movement)—and the “worth” of a liberty—constituted by the availability of resources, such as time and money, that one can use to do it (e.g., bus fare). Formal opportunity for political activity is a matter of, among other things, who may cast a ballot; how that ballot is counted; and what political speech and association is permitted. By contrast, informal opportunities for influence are a matter of commanding resources—such as wealth, leisure, and information—that one can apply in acquiring information, casting a ballot oneself, persuading other citizens to vote in a given way, and influencing the decisions of officials. By analogy, a *fair* distribution of informal opportunity for “religious activity” need not be an *equal* distribution of informal opportunity for religious activity. Against a backdrop of an otherwise just, but unequal, distribution of wealth, for example, it is not objectionable for some group to have greater (informal) opportunity for pilgrimages than another group. Why then, in case of political activity, should there be special pressure toward equality (Cohen 2001)?

It's tempting to reply that political activity, unlike religious activity, is a zero-sum game (Rawls 1996: 328). If unequal informal opportunity for religious activity is just, it is only because that inequality works to the advantage of the worst off, perhaps by increasing their informal opportunity for religious activity. Unequal informal opportunity for political activity, however, cannot increase the informal opportunity for political activity of the worst off.<sup>16</sup>

But why think that political activity is zero-sum? On the contrary, from a benchmark of equality, giving some people greater informal opportunity for political activity than others have would lead to an overall increase in wealth, leisure, and information that might be “redistributed”

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<sup>16</sup> A different reply, which stresses the more collective understanding of political activity, might be that unless opportunity for influence is distributed equally among us, we do not constitute a self-governing collective. But why? If a collective with an inegalitarian structure (e.g., orchestra, plural voting electorate) can decide and do other things, why can't it decide that it is to do things and then do them? What more is required for a collective to govern itself?

to those with the least of such resources. This might increase their informal opportunity for political activity.<sup>17</sup>

The assumption that it cannot—that political activity is zero-sum—rests on a confusion. Perhaps it can be argued that from a benchmark of equality, increasing A’s informal opportunity for political activity to a greater extent than B’s will reduce the conditional probability of B’s political goals (e.g., the enactment of B’s preferred policy) being realized if B engages in political activity. But it does not follow from this that B’s informal opportunity for political activity is thereby reduced. First, even if the *conditional* chances of B’s goal being realized *if B engages* in political activity are reduced, B may have more chance to *satisfy the condition if he so wishes*—to engage in political activity if he chooses to—in the first place. B may have more leisure time to devote to civic affairs. Second, *realizing a political goal*, important though it may be for other (e.g., substantive) interests, may not be crucial for *satisfying the interest in political activity*. Political activity, arguably, is a matter of participating in the process, in a way that is guided by one’s convictions. Its value does not turn on the outcome. To risk a trivializing analogy, suppose I lose one tennis partner and gain another, more skilled tennis partner. My chances of *winning* are lower. But are my chances of *realizing the values of playing* lower?

#### *A constituent of relations of equality*

It’s not clear, then, that the interest in political activity explains a distinctively democratic concern for specifically equal opportunity for political influence. There may be a different explanation, however, which lies so close to the surface of our thinking about democracy that we are apt to look right past it. The thought is that insofar as we are drawn to the ideal of a society of equals, in which people do not stand over others as superiors, or under others as inferiors, we should see equal opportunity for political influence as a necessary constituent of that ideal, and, even when the ideal cannot be achieved, as very often an important part of the second-best. It is, I confess, hard to give much articulate explanation of why we should be drawn to such an ideal, not least because such an ideal precludes stratified, hierarchical relations in which people (at least at other times and places) seem to have found meaning. However, I suspect that many of us are drawn to such an ideal, or at least many of us already predisposed to think that democracy somehow matters in itself.

In any event, being drawn to the ideal of a society of equals is not necessary for understanding what it is. And understanding that ideal, or at least understanding its negative image, comes to us naturally (perhaps literally). When presented with relevant descriptions of social relations, we grasp immediately that some are marked by hierarchy and subordination. We have no trouble sorting roles, classes, strata, statuses, rankings, etc. into “higher” and “lower.” We know the paradigms: lord and servant, Brahmin and Dalit, patrician and plebian, and so on. Just as other social animals are alert to their pecking orders, we are alert to our human analogues, irrevocably transformed though they are by symbol and self-consciousness.

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<sup>17</sup> Estlund 2000 and Pevnick 2016 warn of one such trade off. Restricting money in campaigns, in an effort to equalize influence, may impede the dissemination of information, which may thereby worsen the opportunity for informed influence of those with the least such opportunity. Perhaps. But, as Estlund grants, that’s a significant “may.” Increasing the throughput of accurate reports about, say, a certain official’s use of a private email server might only distract people from more important things, or engrave a vague impression of disqualifying misconduct.

This isn't to say that we find it easy to analyze what we so effortlessly recognize. In what do such relations of superiority and inferiority consist? In part, it's a matter of the greater weight given to the substantive interests of the superiors. In part, it's a matter of the superiors enjoying positive consideration denied to others, which goes beyond the weight given to their substantive interests: e.g., respect, courtesy, deference. In part, and more important for our purposes, it's also a matter of the superiors' greater "de facto authority": i.e., the capacity to issue commands that are, for whatever reason, generally obeyed. And in part, and also more important for our purposes, it's also a matter of the superiors' greater power of other kinds over others, whether this takes the form of force, withholding goods, or altering the environment.

But this is all to a first approximation. Certain conditions affect whether asymmetries in de facto authority and power constitute objectionable relations of superiority and inferiority. First, the asymmetry is less objectionable if one can cheaply and easily exit it. The point is not so much that if one can leave, one has no one to blame for one's subordination but oneself, but rather that the freer one is to leave, the less it seems like subordination in the first place. For example, "the firm," by definition, involves some asymmetry in de facto authority between managers and workers. But it makes an important difference whether a worker can, without too much cost or trouble, leave a given firm and find another job. Second, the asymmetry in de facto authority and power might be limited in content, place, and time. Managers might only be able to tell workers to perform work-related tasks, on the shop floor, when they are on the clock. Third, the asymmetry may itself be regulated by a higher court of appeal, or a decision further up the chain of command, which is not itself marked by that asymmetry. Relations between manager and worker might themselves be regulated by bargains struck, from a position of equality, at the start of each year. Finally, the people in the relationship marked by the asymmetry might also stand as equals in some other recognized, somehow more basic, relationship. Once the whistle blows, manager might be just another citizen.

Since political decisions themselves have de facto authority and power over others, an individual's opportunity to influence them is itself a form of de facto authority and power over others. And the moderating conditions just discussed make equal opportunity to influence political decisions especially important to avoiding relations of superiority and inferiority. First, it's costly and hard to avoid subjection to the political decisions of a given jurisdiction, and impossible to avoid subjection to the political decisions of some jurisdiction. Second, political decisions have extensive reach. As far as the law is concerned, the shop floor extends all the way to the border, and one is always on the clock. Third, political decisions are typically "final": that is, they sit at the apex of the hierarchy, above which there is no appeal, short of heaven. So there can be no recourse to a decision higher up the chain of command, over which we enjoy equal influence. Put more positively, if we do share equal influence over political decisions, then this fact may help to make acceptable asymmetries in the other relationships and associations that those decisions structure and constrain. Whatever hierarchy there may be, one might say, is ultimately regulated from a standpoint of equality. Finally, this very fact, among other things, may help to constitute another, more basic, relationship of equality.<sup>18</sup>

Here, again, although for different reasons, what matters is opportunity, not its exercise. The reason is not that the exercise of the opportunity has value only if it is exercised. Indeed, the present view is silent on whether my exercise has any value at all. Nor is it that asking me to

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<sup>18</sup> This discussion is largely an attempt to come to terms with the chord struck by Rawls 1971: 227 and Cohen 1997: 120–1.

pitch in is a reasonable way to divvy up the labor of servicing my needs. It's instead that if you and I have, and will continue to have, the same opportunity to influence the decisions to which we are subject, then the fact that I refrain from exercising it on occasion does not somehow subordinate me to you. However, it is important that I *continue* to have the opportunity. That is, my opportunity for influence must be "standing," not one-off. It isn't enough that, once upon a time, you happened to win a lottery.<sup>19</sup>

Moreover, the opportunity must be for *informed* influence. If an asymmetry in influence over a decision threatens to subordinate you to me, it scarcely defuses the threat that while both of us can, in a suitably objective sense, "influence" the decision, I know how to influence it in accord with my judgments, but you do not: that your attempts at influence are, from your perspective, arbitrary guesses. To take the sort of case that gives analytic philosophy a bad name: a disparity of knowledge of this kind could be what makes you my slave; I know the code that unlocks your chains, whereas you can only enter numbers at random. And the opportunity must be for *autonomous* influence: via your independent reflection on what you take to be relevant reasons. It hardly solves the problem if I can manipulate you to "decide" as I please.

To take stock: In this and the previous section, we identified two different concerns about the distribution of opportunity for political influence. One was a concern to distribute fairly a means to political activity, viewed as one choice-dependent activity among others. The other concern was to avoid relations of superiority and inferiority, which are partly constituted by asymmetries of power and de facto authority, especially the sort of final, inescapable, far-reaching asymmetries that distinguish "the political."

These two concerns demand different, although perhaps compatible, things from the distribution of opportunity for political influence. In one way, the concern for relations of equality is *more* demanding. As we noted at the beginning of the section, it presses not only for *fair*, but also for *equal*, opportunity. In another way, however, the concern for relations of equality is *less* demanding. In order to satisfy the interest in political activity to any degree, one needs *positive* influence. Moreover, if the interest in political activity is to justify anything recognizably democratic, we must assume that the interest is *better* satisfied with *more* influence.<sup>20</sup> By contrast, one can avoid standing in asymmetries of power and de facto authority even if one has no positive influence, so long as others have no positive influence either. In this respect, lotteries might be as good as equally weighted votes. And, indeed, when voting only risks worse outcomes, lotteries seem clearly superior. Take the stock counterexample to majority rule, in which potential draftees vote to decide who will be conscripted into military service. Moreover (in for a penny, in for a pound) we might add that rule by the accumulated body of law given by lawgivers long gone—the "dead hand of the past"—does not necessarily pose a threat of objectionable inferiority (whatever other defects it may have). At least this is so if it is only such relations among us, the living, not any such "relations" among us and the dead,

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<sup>19</sup> By analogy, if you and I toss a coin to decide who will spend his life as the other's servant, I can't complain that my resulting servitude is unfair. The coin wasn't weighted, and no one forced me to make such a reckless bet. But that does not mean that we are living as equals.

<sup>20</sup> An assumption with puzzling implications. For instance, as Rousseau 3.1 and Dahl 1989: 204–5 observe, it seems to imply that an increase in the size of the electorate, by reducing the "absolute" weight of my vote, somehow undermines something that I have reason to care about. For other puzzling implications, see the draft counterexample and Jefferson's letter below.

that matter. By contrast, if positive influence is what matters, then the natural (if impractical<sup>21</sup>) ideal would seem to be the one that Jefferson put to Madison: that every generation should draw up its own constitution, on the grounds that “the Earth belongs in usufruct to the living”; that the dead have neither powers nor rights over it.”

*Is concern about the distribution of influence absurd? Offices*

So much, for the moment, for what might be thought to *ground* a concern about the distribution of influence. We turn, now, to a complaint that such a concern *implies* something manifestly absurd: namely, that democracy must be direct. After all, in a representative democracy, elected legislators will have far more influence over policy than ordinary citizens. For that matter, so will other officials, such as judges and career civil servants.

Insofar as the interest in political activity is concerned, the question is how it can be fair that, once in office, officials have greater opportunity than other citizens to satisfy their interests in political activity. A natural answer is: “Because other citizens had fair opportunity to *compete*, in some one-off process, for the same office.” Perhaps this is in the end satisfactory. But it at least suggests a puzzle. If appropriately structured one-off competition *for the powers of office* suffice for fairness, then similarly structured one-off competition *for basic rights of political participation* ought also suffice, at least on the supposition that such competition would be no less efficient or conducive to good outcomes. Yet it would seem that, in a democracy, citizens should have standing opportunity to vote, petition, and so on.

At any rate, to the extent that this answer is satisfactory, it explains straightaway one respect in which money in campaigns is an ill. Suppose that one needs to be rich enough to fund one’s own campaign, at least at the early stages, in order to compete for office. This is not simply a violation of what Scanlon ms. calls “substantive opportunity”: that is, *acquiring* the attributes relevant for the position. It’s also a violation of “procedural fairness”: that is, *being considered* for the position solely on the basis of the relevant attributes that one already has.<sup>22</sup> It is as though there were a ton-of-copper charge to sit the examination for the mandarin bureaucracy, or a million-dollar application fee for Stanford Medical School. Note, however, that this complaint is on behalf of *aspiring office seekers*. Yet much of the concern about money in campaigns seems, first, to be on behalf of citizens with or without ambition for political office. Also note that it is a special case of a more general complaint about unfairly divergent prospects for *any* form of employment, inside or outside of politics (Beitz 1989: 174–5). Yet much of the concern about money in politics is specifically about money *in politics*.

Insofar as avoiding relations of inferiority is concerned, the problem with offices seems, at first glance, even more acute. For avoiding such relations, as we have described them, may seem to require (i) not only just, but also *equal*, (ii) not only one-off, but also *standing*, opportunity to influence (iii) *all* political decisions.

But does it require this? In many nonpolitical contexts, if a person, or group, as “principal,” vests in another person, as “agent,” certain powers (for example, to make certain judgments or to bargain on behalf of the principal’s aims) this need not imply the social inferiority of the individual principal (or the members of the group principal) to the agent. Consider doctors, lawyers, accountants, financial advisors, and party planners. In these cases, if

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<sup>21</sup> As Jefferson’s more earthbound correspondent gently commented.

<sup>22</sup> At least this is so if we assume that relevant attributes for office do not include personal wealth per se (as opposed, say, to the economic acumen or executive competence it reflects).

anyone is the “superior,” it’s the principal, not the agent. Indeed, there are uncontroversial instances of this in political contexts as well. Think of seventeenth-century dynasts sending their diplomats to this or that foreign court to negotiate alliances. Nor need one look so far afield. Present-day legislatures routinely delegate decisions to subsidiary bodies, without any question arising of the inferiority of the legislature, or its members, to the delegated body.

The possibility, then, is that whatever conditions obtain in these cases so as to permit us to say that principal is not subordinate to agent, these conditions might also obtain in the special case where the principal is the citizenry as a whole and agent is an official. The official would then be, in the full sense of the phrase, a public servant.

The question, not easy to answer, is what these conditions are. Some exploratory thoughts: First, one plausible condition is that the principal selects the agent, from an adequate range of alternatives, with periodic opportunities to renew or replace the agent. Note that if this is so, then we have identified another objection to making wealth a *de facto* prerequisite for candidacy: namely, that it makes the range of alternatives too narrow. Moreover, this objection would be on behalf of voters (not aspirants to office), and it would be special to politics.<sup>23</sup>

Second, the conditions may depend on the sort of agency the agent has. In particular, the conditions on selecting an agent with the power to issue a broad range of commands, at the higher reaches of the decision-making hierarchy—such as the power held by representatives in a legislature—will be more stringent, requiring more or less direct choice. By contrast, the conditions on selecting an agent with the power to apply or execute a narrow set of commands—such as the power held by central bankers or redistricting commissions—will be less stringent, perhaps satisfied by appointment by a more directly chosen agent.

Third, it seems important that the agent, once selected, decides as the principal had reason to predict, at the time of selection, that the agent would decide. This need not mean, indeed cannot mean, that the agent deduces each decision from a contract or platform announced prior to selection. In any interesting case, the agent will need to exercise judgment in the face of emergency, opposition, new information, changed conditions, proposed bargains, trade-offs among objectives, shifts in the attention of others, and much else. One cannot formulate, let alone communicate, a complete hypothetical plan for every possible constellation of factors.

Fourth, at the time of selection, the principal (or each member of a group principal) is as well placed to predict how the agent would decide on a given question, in a given situation, as the agent herself is. Predicting what the agent will do depends, in part, on knowing what sort of person the agent is like: their priorities, worldview, work ethic, risk aversion, attention span, ability to delegate, capacity for learning, emotional self-control, sources of information and official advice, and so on. While I agree that sickeningly little attention was paid to candidates’ declared policy positions in the recent general election, it is important to note that the predictive significance of those declarations is often indirect, as indicators of worldview, sources of advice, and so on. The man is, one fears, the measures.

Finally, from time to time during the agent’s tenure, some member of the group principal (who is not herself acting as an agent) may have the opportunity to make a case to the agent for or against particular decisions that the agent might take. If we are assuming (as when the principal is the citizenry) that members of group principal should have equal opportunity for influence, then other members of the group should have similar opportunity to make such a case.

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<sup>23</sup> So it might support Scanlon’s claim that the “legitimizing force of elections is undermined if some citizens... cannot afford the means to become candidates” (ms. Ch. 5).

One might suggest a further condition: that the agent strive at each moment to do what the principal prefers at that time. This suggests a new case for “responsive” policy. The case is not, as before, that individuals have an interest in the satisfaction of preferences for policy as such. It is instead that official, as agent, stands in the right relation to citizenry, as principal, only insofar as the official does what the citizenry prefers.<sup>24</sup> She must be a “delegate,” not a “trustee.”

I doubt that principal-agent relations in general require this sort of responsiveness. In any event, it’s unclear how even to apply this condition when the principal is the electorate. For it would require a conception of what the *electorate itself* prefers: the “popular will.”<sup>25</sup> Yet such a conception eludes us (even setting aside formal results, like Arrow’s Theorem, to the effect that there is no general method, with certain supposedly desirable properties, for aggregating individual preference orderings). For one thing, when we take instrumentally and temporally conflicting policy preferences into account, it is not clear what it would be to satisfy even an individual’s preferences. For another thing, on what grounds can we say that the popular will is given by the preferences of a majority, as opposed to a plurality or one or another supermajority threshold? Not on grounds of equal influence, at least. For, as we will see, equal influence does not privilege (say) majority rule over supermajority requirements.

### *Is concern about the distribution of influence absurd? Persuasion*

The last section took up one absurd alleged implication of a concern for the distribution of influence: namely, government without officials. This section takes up another such absurd alleged implication: namely, democracy without persuasion. Call unequal influence “judgment-dependent” if it results from the influenced person’s independent reflection on what she takes to be relevant reasons. For example, Expert has a greater ability than Crank to affect Hearer’s vote simply because she will find Expert’s case more convincing. What seems absurd is that these judgment-dependent inequalities should be objectionable: that Hearer should resist the force of Expert’s better argument, lest she deprive Crank of an equal say (Dworkin 2002: 195).

The first thing to observe in response is that, while controversial, it’s not absurd that judgment-independent inequalities in informal opportunities for influence are objectionable. Suppose that Expert has greater opportunity than Crank to make his case to Hearer, because of factors that do not depend on how she exercises her judgment. Perhaps Expert owns the only ditto machine in a hundred-mile radius. So what we need to explain, to save the concern for the distribution of opportunity for influence from absurdity, is why, intuitively, we take such a lenient view of judgment-dependent, but not necessarily of judgment-independent, inequalities.

An adequate explanation may simply be that we need to draw such a distinction whenever we evaluate a distribution of opportunity (e.g., as fair or unfair). Set aside political influence for the moment, and consider a fair distribution of opportunity for religious practice, comprised of religious liberty and means to make use of it. While a fair distribution may be upset by judgment-independent factors, it is not upset by judgment-dependent factors, such as others’ not sharing your faith. That is, fair opportunity to pursue one’s religious convictions should not be understood in such a way that, simply because there are not enough people

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<sup>24</sup> Moreover, this new case for responsive policy might offer an explanation, where the earlier case did not, of why the *causal influence* of citizen preferences on policy should matter.

<sup>25</sup> None of the values that we have considered until now have required a conception of the popular will. In particular, a fair distribution of preference satisfaction requires only a conception of what individuals prefer and a principle of fair distribution among individuals.

persuaded by my faith, leaving me without the quorum required for its rites, I am deprived of fair opportunity to pursue my religious convictions. For my failure to muster a minyan, say, results from what surely counts as *others' exercise of their like opportunity* to pursue their religious convictions: their choice not to join my faith. In other words, the very project of evaluating opportunity to pursue one's religious convictions seems to require us, first, to distinguish between inequalities that result simply from others' pursuing their own convictions—from their exercising *like opportunity*—and inequalities that have independent sources, such as persecution or an unjust distribution of leisure. And it requires us, second, to view only the latter as threatening the acceptability of the distribution.

Similarly, Crank cannot claim that, simply because Hearer concludes that his arguments don't hold water, she has deprived him of fair or equal opportunity for influence. For the alleged deprivation of his opportunity here would result simply from her exercise of *like opportunity*: namely, to influence political decisions on the basis of one's reflection on what one takes to be relevant reasons. And if Hearer's discounting Crank's case in this way does not deprive him of like opportunity, there is no reason to avoid so depriving him by ignoring Expert. There is, then, no special embarrassment here for the idea of fair or equal opportunity for political influence. There's just a distinction we make whenever we evaluate a distribution of opportunity.

*Are the ills failures of just or equal opportunities for influence? Formal procedures*

At long last, we can ask whether these two concerns about the distribution of influence might explain why the ills are ills. To be sure, these concerns don't explain all the ills. The fact that arbitrary voters make poor use of their opportunities doesn't mean they don't have them. But some of the ills do seem to involve objectionably lopsided opportunities for influence. This section looks at formal opportunities, whereas the next looks at informal opportunities.

First, we need to make an implicit distinction explicit. "Influence" is often understood in narrowly counterfactual terms. One's choice *influenced* the outcome only if one's choice was *decisive*: that is, had one *not* so chosen, that outcome would not have occurred. However, even if one is not decisive, one might still have *contributory* influence. This might be understood on the model of applying a vector of force, which combines with other vectors to determine a result. The result is sensitive to this vector of force, and the vector remains the same in its "magnitude" and "direction," no matter what other vectors are supplied. Images of placing weights on scales, or applying equal tension to a rope in a game of tug of war, suggest themselves (Goldman 1999). In speaking of "influence," I have implicitly meant "contributory influence."

How do we evaluate one's formal opportunity for contributory influence under a given voting procedure? I suggest (bloodless though it sounds): by evaluating the "a priori" chances that one's vote is decisive over the outcome. I and you exercise equal contributory influence over an outcome by voting just when my vote and your vote have equal chances of being decisive over the outcome, assuming that no pattern of other votes is more likely than any other pattern.<sup>26</sup> If, as it were, the weights are equally heavy, then everyone should have the same chance of tipping the scales, assuming that no placement of other weights is more likely than any other placement.

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<sup>26</sup> This is in the spirit of Shapley and Shubik 1954, notwithstanding forceful criticisms, such as Barry 1980, of the use of their index for other purposes.

Against this, one might argue that, surely, *actual* decisiveness, decisiveness given the *actual* pattern of other votes, is a better measure of contributory influence.<sup>27</sup> It is more “realistic,” more attentive to the facts on the ground. But, first, in one way, this alternative interpretation makes no difference. As things are, electoral systems that give equal a priori chances of decisiveness (henceforth, “equal chances”) also realize equal actual decisiveness, because they almost never leave anyone decisive. Second, in another way, the alternative interpretation makes a difference, for the worse. Many systems that do not give equal chances nonetheless realize actual decisiveness. With selective disenfranchisement, or with plural voting (in which, say, the better educated have additional votes), no one is almost ever decisive either. And yet these systems seem like fixed-point examples of unequal opportunity. Finally, as we saw with the judgment-dependent disparity between Crank and Expert, the evaluation of someone’s opportunity for X-ing, as part of an evaluation of the overall distribution of opportunity, should not depend on *how* others *actually* exercise their like opportunity to X. Again, one’s opportunity to pursue one’s faith is not compromised by the fact that few others are persuaded to join one.

If formal opportunity is, roughly, measured by a priori chances, then both vote suppression and formal disproportionality certainly distribute formal opportunity *unequally*. And they almost as certainly distribute opportunity to pursue political activity *unfairly*. Suppression doesn’t, in some compensating way, increase the “absolute” opportunity of those suppressed. It is less clear, however, whether similar criticisms can be made of status quo bias, substantive disproportionality, persistent minorities, or gerrymandering.

*Status quo bias*: I focus on the case of supermajority requirements. Granted, supermajority requirements are *not neutral between outcomes*. They favor keeping policy over changing it. But still they distribute opportunity for influence *equally among people*. Each person has the same opportunity as has any other person to influence change—even if the (equally enjoyed) opportunity to influence change is less than the (equally enjoyed) opportunity to influence stasis. Presumably, what matters is that *people* have equal or fair opportunity to influence decisions, not that *decisions* have equal or fair opportunity of being made.

Now, one might reply: “Supermajority requirements do *not* give people equal or even fair opportunity for influence. For, taking as given which outcome which people actually prefer, supermajority requirements give those who prefer stasis greater opportunity to influence *the outcome that they prefer* than they give others to influence the outcome that they prefer.”

Where relations of equality are concerned, however, the reply finds no foothold. To see why, start with a contrast. Where an interest in an attitude-dependent activity is at stake, there are at least the makings of a complaint that it is harder for A to satisfy that interest *given A’s actual attitudes* than it is for B to satisfy that interest given B’s actual attitudes. After all, one engages in an attitude-dependent activity only insofar as one’s actual attitudes guide one. Where relations of equality are concerned, by contrast, what ultimately matters is not some attitude-dependent activity that one pursues by *exercising* an opportunity, but instead a status one has by *having* an (equal) opportunity. So there aren’t even the makings of such a complaint.

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<sup>27</sup> “Equal chances” is essentially the “power” that Beitz 1989 contrasts with “prospects of success.” However, “actual decisiveness” differs from “prospects of success” in two ways. First, actual decisiveness depends on how things in fact are, not how they are likely to be (which seems of only derivative interest). Second, “success” does not require influence; it seems equivalent to the satisfaction of preferences (for the outcomes of elections and referenda, if not for policy).

Where an interest in political activity *is* at stake, however, can one make such a complaint: that supermajority requirements treat B unfairly because they give B less opportunity to satisfy B's interest in political activity, given B's preference for change, than they give A to satisfy A's interest in political activity, given A's preference for stasis? Again, we should not identify B's political activity with the achievement of B's goal. And, more generally, it's not clear that when evaluating the distribution of opportunity we should gauge the extent and quality of B's opportunities relative to B's actual attitudes. It may instead be more appropriate to view B as "free," in Rawls's sense, of not being identified with any actual attitude. Compare Rawls's 1975 reply to Nagel 1975 that while his theory was not *neutral among conceptions of the good*—because it made it harder to pursue less individualistic conceptions—it was nonetheless *fair to persons, viewed as free*.

Against this, one might protest that viewing persons as free would leave us unable to object to banning *everyone's* practice of, say, *one* religion, *but not others*. After all, while not neutral *among faiths*, the ban might seem fair to *persons viewed as free from the faith they actually have*.<sup>28</sup> But there are other objections to such a ban. It may limit everyone's opportunity (whether or not they are drawn to it) to no good effect. And insofar as people (even the unobservant) are socially identified by religion, banning a faith, even if it did not limit opportunities in an objectionable way, would tend to stigmatize those identified with it as an underclass (Kolodny ms. a). Neither objection applies, in general, to supermajority requirements. First, such requirements may be to some good effect. Second, while people may be socially identified to some extent as "conservatives" and "progressives," they are not, I take it, socially identified as "supporters of keeping whatever the (possibly highly progressive) present policy happens to be" and "supporters of (possibly extremely reactionary) changes to the present policy."

*Substantively disproportional representation*: So status quo bias need not distribute influence objectionably. Does substantive disproportionality distribute influence objectionably? The most promising case that it does runs as follows: A system that permits representation out of proportion to votes for that party (or, where some single question is to be decided, for a given answer to that question) is, for that reason, a system that distributes opportunity for influence unequally. Now such disproportionality can arise from equal chances, as district systems exemplify. Yes, one might say, and so much the worse for district systems and equal chances! Only something like a proportional party list gives equal (formal) opportunity for influence.

Perhaps, but I know of no good argument. Christiano (1996: 234) and Still (1981: 382) see districts as violating the following constraint: that any two patterns of votes that differ only in certain kinds of facts about particular voters (e.g., where they reside) should deliver the same outcome. For example, if we swap the opposing votes of a voter, Ty, in a tied district and a voter, Lopseid, in a far from tied district, then we change the outcome. Yet I can't see what Lopseid's complaint could be in this case, if not that Ty, but not he, is actually decisive. And that complaint has had its hearing. The main practical difference between districts and party list may simply be that the former tends toward only two major parties, which in turn compels the formation of coalitions before, rather than after, elections. An important difference, to be sure, but not obviously a matter of the distribution of formal influence among individuals.

*Persistent minorities*: Do persistent minorities represent an objectionable distribution of influence (distinct from a tendency to worse outcomes)? If so, it's not, as we've just seen,

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<sup>28</sup> Indeed, although Rawls 1971 treats restrictions on a minority religion as the paradigm of unequal liberty, they do not give any citizen, viewed as free, less religious liberty than any other.

because they are substantively disproportionately represented.<sup>29</sup> Nor is it because members of persistent minorities have less opportunity for influence than do members of the majority. As individuals, their chances are equal, and their actual decisiveness is equally zero. We often dramatize the complaint of members of persistent minorities by saying that their votes “made no difference.” But members of persistent majorities can almost always make the same complaint.

What may be true is that the majority *as a group* enjoys greater influence than does the minority *as a group*: indeed, that the majority is always actually decisive. Perhaps, in addition to caring that I not be subordinated as an individual to another individual with whom I have a claim of equality, I might also care that my group (e.g., blacks, Catholics) not be subordinated to another group (e.g. whites, Protestants) with which mine has a claim of equality. Perhaps such subordination is partly constituted by the fact that the other group is always decisive, whereas mine never is. The challenge for this appeal to vicarious, group subordination is to specify the relevant groups. Why count a member of the minority as a member of the minority instead of as a member of the electorate as a whole, or, for that matter, the majority plus that individual? In the cases most apt to stir anxiety about persistent minorities, however, an answer seems ready to hand. The relevant groups are those (e.g., blacks, Catholics) defined by a not-too-distant history of group subordination, of a kind that involved more than simply being outvoted.

*Gerrymandering*: Gerrymandering is, I suspect, a special case of a more general category. (An example of my list’s poor hygiene.) The more general category is of deliberately but non-remedially selecting an equal chances procedure because, given the distribution of electoral sentiment, it favors a particular outcome. Such selection needn’t involve drawing districts. For example, an incumbent might replace majority rule with plurality rule for fear that the presently divided opposition would otherwise unite in a run-off.

Does gerrymandering cause, or reflect, an unequal (let alone unfair) distribution of (formal) opportunity for influence (distinct from entrenching persistent minorities, or bringing about worse outcomes)? It’s hard to make *that* charge stick. For *once the districts are drawn*, it’s hard to deny that each individual has equal opportunity for influence. It’s tempting to reply: “Yes, ‘once the districts are drawn.’ But the whole point is that our gerrymanderer, Gerry, has a greater opportunity to influence *how the districts are drawn!*” However, if districting belongs to Gerry’s office, then why should *this* greater opportunity be any more objectionable than any other attached to that office? Moreover, would this greater opportunity have been objectionable if Gerry had used it to district *without gerrymandering*? Conversely, wouldn’t gerrymandering *by referendum* be similarly objectionable?

At least part of the problem with gerrymandering may be not that it distributes unequally influence over any given decision (e.g., election, referendum, official act), but instead that it makes *certain decisions too consequential*. For the decision that determines the districts selects an equal chances procedure that ensures, given the actual distribution of electoral sentiment, that *every subsequent application* of that procedure, at least until the next districting, will result in a certain kind of outcome (e.g., one party’s control of the state’s congressional delegation, the incumbent’s reelection). For example, if, on certain grounds, it has been established that the state’s congressional delegation should come up for a vote every *two* years, then one can object on same grounds to districting that determines the state’s congressional delegation for the next

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<sup>29</sup> Moreover, would it assuage the anxiety about persistent minorities if they were substantively proportionately represented by a persistent minority in the representative body?

*ten* years. The objection is something like the objection to cancelling the next four elections.<sup>30</sup> Of course, this leaves open what the grounds for more frequent elections might be. One ground is simply better outcomes. But the distribution of influence, or the values that underlie it, may also play a role. For instance, more frequent elections may be necessary for the relationship between voters and elected officials to have the right sort of principal-agent character.

*Are the ills failures of just or equal opportunities for influence? Informal opportunities*

We have been discussing whether some of the ills are a matter of objectionably distributed *formal* opportunities for influence. Now we turn to *informal* opportunities.

An unequal or unjust distribution of time or money does not immediately entail an unequal or unjust distribution of informal opportunity for influence. It depends on whether disparities in time and money can be converted into disparities in influence. In theory, diminishing returns to time and money might set in quickly, above a low threshold, so that disparities in time and money could not be converted into disparities in influence.

However, some of the ills are at least circumstantial evidence that this is not so. Unless the non-affluent are systematically choosing not to exercise opportunity they have, for example, Gilens's findings suggest that informal opportunity for influence is not distributed fairly or equally among affluent and non-affluent citizens. Similarly, the money lavished on campaigns, as well as the extensive lobbying efforts of special interests, suggest that many close to the action *believe* that money can be converted into influence, either over voters or over officials. Moreover, so long as officials *so much as believe* that campaign *spending* influences *voters*, that may *suffice* to make it the case that campaign *contributions* do *in fact* influence *officials*.

If disparities in leisure and wealth can be converted into disparities in informal influence, then equal or fair opportunity for informal influence would require either preventing the conversion, or reducing the inequalities, or at least the unfair inequalities, in leisure and wealth itself. A challenge, to put it mildly. On the other hand, reducing at least unfair inequalities in leisure and wealth is something that we already have reason to do.

In any event, this challenge may seem dwarfed by the challenge posed by disparities in access to information. Even under an ideal distribution of wealth and leisure, the mere division of labor would seem to militate against equal access to information, or at least information relevant to a given policy question. Those in a given industry, for example, will surely have greater access to information about existing regulation in that industry, possible alternatives, and their likely effects. It's what they do all day. While it's true that greater access to information relevant to a particular policy does not necessarily mean greater access to information relevant to policy overall, it would be a happy coincidence if differences in access to information relevant to particular policies were perfectly offsetting.

Perhaps the extremity of this challenge detracts from the plausibility of the ideal that puts the challenge to us. But if not, the ideal supplies a further reason for a vigorous and able press, guided by a sense of proportion. The role of the fourth estate is not just to inform members of the public, in "absolute" terms, as it were. It is also, by so doing, to close the "relative" gap

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<sup>30</sup> To avoid this problem, the districting process now should be insensitive to the sort of factors that are supposed to determine elections later: e.g., the activities of one or another of the political parties, or candidates, running in that later election. Perhaps this can be accomplished by citizen commissions, or by random selection among maps that meet suitably insensitive criteria.

between the public and those in the know (there being no option of, and obvious costs to, the cognoscenti “leveling down,” by somehow unlearning what they know).

One worries, though, about yet another challenge. Often one side of a policy dispute has a much easier time exploiting the formal opportunities for political association to organize, even independent of any prior disparity in time, money, or information. For example, the power of the NRA isn’t simply due to the largesse of wealthy individual donors or gun manufacturers. Much of its funding comes from (one grudgingly concedes) a grass-roots membership, which it, moreover, very effectively mobilizes to vote against candidates who so much as entertain gun-control legislation. The very structure of the policy dispute may make it easier for one side to organize in this way. As has long been observed, when the costs to group A of policy P are salient to A, and are perceived by A to be concentrated and certain, whereas the benefits to B of P are less salient, more diffuse, and less certain, we might sooner expect A to organize in opposition to P than B to organize in support of P. And this difference in salience can be reinforced in turn by the simple fact that opposition to P coalesces around a clear and easily policed rule, such as “No new restrictions on firearms” or “No new taxes,” whereas P is just one of many possible departures from such a rule that are competing against one another for support. If this is why A finds it easier to organize, do A’s members have greater opportunity for influence? It’s not clear why we shouldn’t instead chalk up the difference to their greater willingness to use their opportunities, lamentable as this may be.<sup>31</sup>

### *Conclusion*

We began with a litany of ills said to afflict democracy. We asked why they were ills. We identified three main answers: worse results, unresponsive policy, and an objectionable distribution of opportunity for influence.

Why worse results matter hardly needs explaining. The trouble is being confident that the ills lead to worse results. Uncomfortably “partisan” though it is, I find myself most confident that they do when and because they advantage the political right.

By contrast, there can be little doubt that the ills contribute to, or reflect, unresponsive policy. Here the trouble is explaining why unresponsive policy should matter. In fact, I doubt that it does matter, or that responsive policy is even a coherent ideal.

There is more (even if not enough) to be said about why the distribution of opportunity for influence might matter. For one thing, people have an interest in political activity. However, this interest may not fully account for the democratic ideal’s pressure to equality. This pressure might be explained instead by a concern to avoid a society of superiors and inferiors: inter alia, a society marked by relations of asymmetric, final, and inescapable power and de facto authority. Yet while the image of such a society disquiets me, and, I suspect, others, I struggle to say, in any very articulate way, why.

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<sup>31</sup> The case for facilitating the organization of labor, by contrast, is not just that employers find it easier to join forces with likeminded employers. It is needed as a counterweight to the monopsony power of employers (which drives wages too low from the perspective of both workers and consumers), and as a way to moderate the asymmetries of power and de facto authority of owners and managers over workers within the firm.

I’m not sure what to say about differences in the ease of organizing for political influence due to the opportunity to harness organizations established for non-political purposes, such as corporations, unions, or, as in the case of the AARP, shady insurance marketing outfits.

If, on either ground, fair or equal opportunity for influence matters, then it explains at least some ills. It condemns vote suppression, for example, more or less directly. In other ways, however, a concern for the distribution of opportunity for influence can seem either too demanding or too permissive. Granted, it may not be so demanding that it forbids feeling the force of the better argument. And, granted, it may not be so demanding that it requires direct democracy (notwithstanding the challenge of specifying the conditions for appropriate relation between representatives and represented that representative democracy requires). However, a concern for the distribution of opportunity for influence places demanding constraints on the distribution of money, leisure, and, perhaps hardest of all, access to information. These constraints may be so demanding as to cast into doubt the ideals that seem to call for them.

On the other hand, the two concerns for the distribution of influence may seem too permissive. Granted, we may not be so troubled that neither concern files a complaint against arbitrary voting, or polarization, or status-quo bias. If these are evils, perhaps it's just because of the mischief they work on outcomes. And a concern for the distribution of influence among groups, if not individuals, may explain what, beyond worse outcomes, is wrong with persistent minorities. It is harder, though, to substantiate the charge that gerrymandering, or the greater ease of organizing on one side of an issue, involves unequal or unfair opportunity for influence. (Gerrymandering may make certain decisions too consequential, but that's a different point.) All the same, I feel a lingering disquiet about these ills, a disquiet which seeks to expression as the charge that, well, like, the few have too much of a say.

#### *Appendix: Corruption*

Voices both on the right (e.g. the U.S. Supreme Court since *Buckley v. Valeo*) and on the left (e.g. Teachout 2014) suggest that the problem with money in campaigns, or with special interests, is not worse outcomes, or the distribution of influence, but instead “corruption.” To animate the suggestion, contrast two cases that “control,” as it were, for outcomes and influence. In *Corruption*, Schmeared bribes legislator, Schmeared, in order to advance (or more realistically, to stall or amend) a certain piece of legislation, L, in a way that is otherwise permissible. (That is, an unbribed legislator, in the right frame of mind, might permissibly advance L). In *Contribution*, Conti exerts the *same influence* by contributing to a campaign for a referendum on L, or to elect a candidate, Candi, who already supports L. Crudely put, Corruption seems worse.

Why? Not because it is wrong to influence political decisions in a way that *one believes conflicts with the “public interest”* (roughly, “better outcomes”). That doesn't explain the contrast. Schmeared and Schmeared may believe that L is no worse for the public interest. Nor is it because, even if one does not believe that it conflicts with the public interest, it is still wrong to influence political decisions *from a “private motive”*: i.e., a motive other than the public interest. True, Schmeared presumably acts from a private motive. But, first, so too might Conti and Candi. Second, is it wrong, to the degree to which Schmeared's taking the bribe is wrong, for voters to cast ballots from private motives? Finally, is it wrong for a legislator, Lexi, to act—e.g., to satisfy constituents—from a private motive—e.g., a desire to remain in office?

The problem, perhaps, is not that the official acts from private motives, but instead that the official *uses the office* in a certain way. If officials do, or can, use their office in certain ways—e.g., sell official acts for private purposes—then that puts them in an objectionable relationship to us, even if the official act is, as it happens, to our benefit. For those officials are selling exercises of final and inescapable power and de facto authority over the rest of us. They are, in effect, treating exercises of final and inescapable power and de facto authority over us as

their personal property. And their doing that, or being able to do that, one might think, puts them in an objectionable relationship to us. Compare cases of workplace harassment. If I've been slacking off, then, fine, you're within your rights to fire me. But you shouldn't be able to fire me or not fire me, slacker though I am, depending on whether or not I comply with your request that I wax your car. That makes me your personal servant. This is so even though, in a way, your offer—to let me keep my job if I wax your car—only benefits me, by giving me an option I can take or leave (Kolodny ms b).

By contrast, Lexi may be motivated by anxiety to keep her job, but she does not treat her office as a personal possession—at least not any more than any other employee who tries to satisfy her employers. Or consider a variant of Corruption, where the “bribe” to a legislator, Foresyte, can be used *only* for campaigning (or equivalently a variant of Contribution, where the contribution might *influence* Candi). The variant seems less objectionable than the original (Strauss 1994). Perhaps this is because campaign funds promote Foresyte's broader policy objectives, by keeping someone who shares those objectives (namely, Foresyte) in office. In that case, Foresyte is bargaining support for L for support for Foresyte's broader policy objectives. That's not obviously an abuse of office. It's arguably what Foresyte is in Sacramento or DC to do. We might still worry that this gives contributors opportunity for influence that is unfair or skews outcomes. But then we're back from our detour through corruption, in more familiar bogs.

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