

Collective Wisdom

Principles and Mechanisms

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Democracy Counts

Should Rulers Be Numerous?

David Estlund

In this essay I want to consider the moral significance of numbers in normative democratic theory. In Section I, I suggest that the element of generality in liberal approaches to political justification leaves open many questions about how numerous the rulers should be. Even once democracy itself is assumed, the question of numbers is far from settled. All democracies employ subsets of the citizenry for much of the work of legislation and policy. Even supposing that they must be somehow democratically authorized, that says nothing yet about how numerous they should be. In Section II, I consider a handful of expanding and shrinking factors in order to make several observations about how these countervailing considerations might be thought to interact. There are no practical conclusions in the offing. My modest aim is only to exhibit some of the complexity about numbers that remains even when the principle of democracy, or inalienable popular sovereignty, is taken for granted.

I. FROM LIBERAL REPUBLICANISM TO REPRESENTATIVE DEMOCRACY

A. Sovereignty and Numbers

The idea of democracy is partly about numbers and partly about class. The term *demos* in ancient Greece referred to the class of ordinary people with no special qualifications to rule. Those with special qualifications were thought to be small in number as well, but that is a separable point. The main appeal of rule by

Previous versions of some of these ideas were presented and discussed at a conference entitled “Referenda and Direct Democracy: Moral and Legal Dilemmas,” at Tel Aviv University, June 5–6, 2000; at the Colloquium on Law, Economics, and Politics, convened by Lewis Kornhauser and Lawrence Sager in 2001; at a workshop at Australia University in 2002; and at the conference on collective wisdom at Collège de France in 2008. I am grateful to participants on all of those occasions for comments and suggestions. I thank Andrew Rehfeld for instructive comments on a draft of this essay.

the experts was certainly not that they were few but that they were expert. The appeal for democrats of rule by the demos, the many who, by definition, have no special ruling expertise, can easily look puzzling framed in this way. What do they have going for them other than their numbers, and yet how could that possibly be a reason for them to rule? Plato raised this question repeatedly.¹ In the *Protagoras* he considers the suggestion that no elite should rule because in matters of political wisdom no one is much better than anyone else, but this is highly implausible (and Plato does not himself accept it).² It conflicts directly with the obvious fact that some are so much *worse* than others. It is doubtful that this could have been behind many people's democratic convictions. So perhaps there is something to the numbers themselves.

But Athenian democracy, while direct in its way, was small in comparison with the democracy of modern states, provinces, and even many cities. Not only did it restrict participation to a subset of subjects; even if it had enlarged the franchise to all resident adults, the numbers would not have been very large. Assuming, for simplicity, that enfranchising nonresidents is out of the question, if democracy is preferable to oligarchy partly because of the larger number of rulers (we don't yet know why this is an advantage), we might expect partisans of democracy to recommend that political communities be larger rather than smaller. Of course, traditionally they have recommended just the opposite. Rousseau is exemplary when he insists that even though every subject ought to share equally in sovereignty, democracy requires that political communities remain small, like Athens. And yet Rousseau unequivocally opposed reducing the number of active legislators by having some smaller set represent the others. Should the rulers be numerous or not?

Rousseau's deeper principle, of course, was generality, not numerosity. Society, he insisted, must be governed in accordance with a general will, roughly the shared contents of every member's particular will. Here generality is the crucial thing, not numbers. The principle that should guide government must be in accordance with the will of each citizen (at least so long as that will respects the same status for each other person's will; call this constraint *reasonableness*). I'll call this principle of justifiability to each *liberal republicanism*. I will call the status of being owed such a justification the status of *citizen*.

Liberal republicanism involves a kind of general will. The requirement that an arrangement be justifiable to each citizen, insofar as the arrangement is reasonable, will typically rule out a lot of arrangements. An arrangement meets this standard only if some part of what is justifiable to me overlaps with what is justifiable to you, and this overlap also overlaps with what is justifiable to the next person, and so on for every single citizen. If there is anything that meets

¹ The point occurs throughout the *Gorgias*. For a discussion of several related passages, see R. W. Sharples, "Plato on Democracy and Expertise," *Greece & Rome*, 2d Ser., 41, no. 1 (April 1994): 49–56.

² Hobbes also thought people were relatively equal in political wisdom, and so his undemocratic views have a very different basis than Plato's.

this demanding standard, it will be a certain shared content of every citizen's "acceptability set," or a kind of general will. Without saying a lot more than can be said here about the content of the proviso by which rejection is counted only if it is "reasonable," it is impossible to say whether there is any hope of any arrangement ever meeting the standard set by liberal republicanism. On the other hand, the word "reasonable" should not be assumed to mean what it means in ordinary language. It is a placeholder, with its content to be filled in by substantive moral argument about what sorts of grounds of rejection ought morally to be decisive in scuttling a proposal's legitimacy. A reasonable rejection, as I'm using the term here, is simply any rejection with this moral status. Proposals simply to use certain others for our own benefit as if they were tools clearly violate this requirement, but beyond a few simple cases like this the requirement would need more interpretation.

Liberal republicanism precludes justification in terms that any citizen could reasonably reject. I will call the set of considerations acceptable to all reasonable citizens as counting for or against a law or policy the domain of *public reason*.³

I believe, and will simply assume here, that Plato's claim that certain people ought to be sovereign (as individuals or an elite) owing to their superior wisdom is precluded by public reason. There is no criterion or indicator of the moral wisdom required of the sovereign that must be accepted by all who recognize the equal citizenship of others. Epistemic arguments for political arrangements are not necessarily all ruled out, but invidious comparisons (as I will call them) are. This leaves what we might call "structural" epistemic arguments, since at least these do not involve invidious comparisons. By a "structural" argument, I mean an argument that supports the epistemic value of some institutional arrangement in a way that does not depend on the use of any criterion by which the wiser citizens can supposedly be identified. For example, institutions protecting and encouraging freedom of expression might be held to promote the epistemic value of democracy in certain conditions, but this does not imply any invidious comparisons.

The question is whether structural epistemic arguments within public reason support popular sovereignty. The move to structural epistemic argument by no means guarantees this. Suppose that there were publicly convincing arguments independent of any invidious comparisons among citizens that justice would be best promoted by a dictatorship. The question of how many rulers there should be could be said to arise, in the first instance, at the level of determining the location of sovereignty. It seems best, though, not to refer to this as a point about *rulers* at all. The reason is that it conceals the step from popular sovereignty to a principle of democracy, a step that requires an argument of its own. I will address that later, but first let me propose some more terminology that will be useful in focusing our attention on this crucial step. By the *sovereign body* I mean the set of individuals whose actual acts of authorization

³ This is approximately the same as Rawls's use of the term in *Political Liberalism*, New York, Columbia University Press, 1993.

are required for legitimate rule. *Liberal republicanism*, recall, is the requirement that justification be acceptable to every reasonable citizen (let *generic republicanism* mean the weaker thesis that justification requires appeal to the good of the governed, not necessarily one by one). It is important to note that liberal republicanism does not logically imply popular sovereignty.

By *popular sovereignty* I mean that no citizen has a greater share of sovereignty than any other, and only citizens are sovereign. It is perfectly consistent (though entirely contestable) to say that the general will (as we might call it), implied by liberal republicanism, might best be ascertained and promoted by some form of elite rule – rule by those most expert at ascertaining and implementing the general will. The set of *citizens*, understood as those to whom justification is owed, may or may not all be among the legitimate *members of the sovereign body*, understood as those whose actual wills are equally weighted in authorizing law and policy.

It is a substantive question, not settled by the concepts, whether only popular sovereignty could be justifiable to every (reasonable) individual. Hobbes, for example, accepts the need for justification to each individual (and is proto-liberal in this sense), but the justification he offers yields only elite sovereignty.⁴ Plato, by contrast, is only a generic rather than a liberal republican and shows no sign of accepting either liberal republicanism or popular sovereignty.

An important question, then, is whether liberal republicanism – the requirement of justification to each person who will be subject to the authority in question – can (contra Hobbes) be met only by popular sovereignty (even though they are two different things).

But the next important point is that, in any case, popular sovereignty does not entail democracy. The reason is that the bare idea of popular sovereignty would seem to allow each individual to autonomously alienate or transfer her share of authority on all political matters to some other person or group. This does not reduce the idea of popular sovereignty to nothing. The crucial question would constantly arise as to whether the authoritative act of transferring authority had actually occurred as the principle of popular sovereignty would, at a minimum, require. But *democracy* would be the stronger principle that no individual's share of sovereignty can successfully be alienated in this global way. This is so far vague, since I assume the concept of democracy doesn't preclude democratic authorization of representatives or delegates in certain circumscribed ways. I will suppose that *alienation* of one's sovereignty is the irrevocable authorization of another person or body, whereas (certain kinds of) revocable or responsive authorization of another is not alienation of sovereignty. Government by representatives should not, in this day and age, be precluded by a definition of democracy, since it would be obtuse to hold that "representative democracy" is an oxymoron. The substantive questions

⁴ Although Hobbes, in *Leviathan*, normally speaks of the sovereign by way of the singular terms such as "he" and "his," he allows that as "assembly of men" might be made sovereign. Nowhere, however, does he allow that all subjects jointly constitute the sovereign.

are not about whether representative democracy is democracy, but when, if ever, governance through representatives is legitimate or advisable. If we see the requirement of democracy as the conjunction of popular sovereignty with inalienable sovereignty, and add that sovereignty is alienated in the prohibited sense only when the transfer of authority is irrevocable, then we have begged no questions about the legitimacy of all institutions in which there are representatives. The legitimacy and advisability of revocable representation remain open.

Who are the rulers? If sovereignty is alienable, the members of the sovereign are not guaranteed to be the rulers, since it is a status they could transfer irrevocably. If sovereignty is inalienable, members of the sovereign are also the ultimate rulers. If sovereignty is also popular – equally possessed by every citizen – every citizen is equally and inalienably a ruler.

B. Representation

Election means the (revocable or responsive) sovereign authorization, by voting, of a person or body to make certain choices on behalf of, or in the name of, the sovereign body (which we are supposing is the whole body of citizens). Distinguish appointment from election so that an *appointment* is the authorization of a person or body not directly by the sovereign body, but by some other person or body authorized to do so. Let *policy* mean all collective decisions that are not elections or appointments. (A special case is legislation, which will be discussed later.)

Once popular sovereignty is accepted, there is no avoiding representation in some form. Even Athenian democracy could not entirely govern through the general assembly.⁵ Even if all policy questions could be brought before the sovereign body, there must still be implementation, and the implementers must somehow be chosen. Either they are chosen by the sovereign body, which would be representation, or they are chosen by someone else so authorized by the sovereign body, in which case that person is the representative. Either way there is representation. (Nothing, by the way, is implied here about any relation between the representative and the represented other than that the one authorizes the other.)

If popular sovereignty is inalienable, as the principle of democracy says, then not only must there be representation, but it must be revocable or responsive to the will of the sovereign body. It is tempting to call this “representative democracy,” but there is an ambiguity in this term that will come up shortly.

It may seem as though the implementers could, for all the principle of democracy says, be chosen without any democratic authorization, such as by a hereditary scheme, or by lot, or by some other method provided for constitutionally. Constitutions are themselves limitations on the exercise of popular sovereignty,

⁵ See Bernard Manin, *Principles of Representative Government*, Cambridge University Press, 1997, p. 5.

but they are not inconsistent with it so long as they do not create any alternative sovereign for any purpose. A constitution may have provisions that are not open to sovereign revision, but there might still be no sovereign other than the body of citizens. If the constitution instituted a hereditary line for certain positions, the holders of those positions would not be popularly authorized, and so would be parallel or alternative sources of sovereignty. Whether or not this is a decisive argument against heredity depends on whether there are decisive reasons for insisting on popular sovereignty, a question I will not take up. I leave aside the question of how far the constitution must be popularly authorized. My question concerns when an authority arrangement, possibly including a constitution, itself incorporates popular sovereignty. The question becomes pointed when we concentrate on the inevitability of a relatively small number of policymakers for at least a sizable fraction of policy decisions.

Some might say that the question of direct versus representative democracy is not about whether every policy is somehow democratically authorized, but only whether *legislation* must be made by the whole sovereign body or whether it might instead be made by elected or appointed intermediaries. Perhaps then it would be unnecessary to resort to smaller numbers. In truth, though, the emphasis on legislation would not change matters much. Technology may well allow everyone to vote from his home computer or cellular phone, but the amount of time that would be required to run a legislature that consists of all citizens would be wildly infeasible if it is even possible in principle. (Don't think just of time spent voting when bills make it to a final vote. How could the whole body of citizens run the deliberations that would bring the bill to this point? And keep in mind the combined burden of all legislative activities that are constantly occurring at local, state, and national levels of government.)

Even if the time problem were solved, it is not clear that there is a relevant principled distinction between law and all other policy anyway. It is unavoidable that much policy be made by intermediaries rather than by the sovereign body as a whole. And we are taking for granted (by the principle of democracy) that these decisions must be authorized at least indirectly by the popular sovereign body as a whole. They are made either by authorized representatives or by those duly appointed by representatives. Only a small fraction of the necessary decisions could possibly be made by the sovereign body as a whole, and it is a cheap route to direct democracy simply to define any decision made by representatives or appointees as nonlegislative.

If the question arises as to whether representatives count as rulers, there is no reason to deny it. I do not mean only that, as citizens, they too have equal membership in the sovereign group. In addition to this, their status as authorized representatives gives them ruling powers that other citizens lack, and so they are rulers in a further sense. But it would be important to distinguish between authorized rulers and ultimate rulers. The ultimate rulers under inalienable popular sovereignty would still be the set of all citizens, since any other ruler must be authorized by acts of theirs.

C. Regency, Representative Assembly, or Referendum?

Pure direct democracy, then, is wildly infeasible. So the question is not whether democracy can legitimately employ representatives, but when it would be good to do so and when not. Not all decisions can be made by direct democracy, but since some can, there is the question of which ones should and which ones should not. Compare two positions on this question, both available within the commitment to democracy. The first, *pure representative democracy*, is the view that the sovereign body ought not to make any decisions except the election of representatives. The second view, *mixed representative democracy*, holds that while the election of representatives is necessary and legitimate (so long as the arrangements don't amount to an alienation of sovereignty), the sovereign body may also make some nonelective or directly democratic decisions. We might call directly democratic decisions other than elections *referenda*. (Consider here all and only referenda whose passage would constitute legally binding policy.)

Pragmatic reasons preclude pure direct democracy, but it is not clear that it would be desirable anyway. We are assuming popular sovereignty, but the connection between that and numerous rulers requires argument. We can grant inalienable popular sovereignty (democracy) and constitutional limits on its authority (somehow imposed), and even grant that pure direct democracy is wildly infeasible and either pure or mixed representative democracy is required on at least pragmatic grounds. But none of this lends any support to the idea that the representative body must have more than one member, an authorized and legally limited representative legislator. Hobbes had no trouble with the idea that a whole people could be represented by a single person, so nothing about the idea of representation provides the rationale for a large number of legislators rather than a single individual or a small ruling body. In an important sense, this would be a representative democracy, but it would be misleading to let that name, which invariably connotes a large number of representatives, cover it. I will refer to this possible office as *regent*, which connotes derivative authority and also the possibility of either an individual or a small board.⁶

Carl Schmitt noticed this point:

If for practical and technical reasons the representatives of the people can decide instead of the people themselves, then certainly a single trusted representative could also decide in the name of the people. Without ceasing to be democratic, the argumentation would justify an antiparliamentary Caesarism.⁷

⁶ “Regent, 1. One who rules or reigns; a governor; a ruler. – Milton. 2. Especially, one invested with vicarious authority; one who governs a kingdom in the minority, absence, or disability of the sovereign. 3. One of a governing board; a trustee or overseer; a superintendent; a curator; as, the regents of the Smithsonian Institution.” *Webster’s Revised Unabridged Dictionary*, 1998.

⁷ Carl Schmitt, *The Crisis of Parliamentary Democracy*, Cambridge, MA, MIT Press 1988, p. 34. Schmitt’s reference to “Caesarism” shouldn’t distract us from the fact that the office that I prefer to call “regent” wouldn’t be a dictator but would be constitutionally limited as well as elected.

It may seem that this is precluded by the logistical problem of time that counted against pure direct democracy. No individual, even a professional, could do all that must be done by a legislature. However numerous, elected representatives are expected to closely attend to all legislation. They can do so only with staffs of their own and various appointed agencies to assist. But these devices of assistance could be made available to the regent too. She or they could have extensive powers of appointment constrained by a constitution.

My point is not to recommend the institution of a regent, but to ask what, if anything, is wrong with it from the standpoint of democracy. It is representative, democratically authorized without any alienation of sovereignty, and constitutionally limited. Citizens would not vote for laws, but nor do they do so if the legislature has five hundred members in a society of 200 million citizens.

I believe it is a critical challenge for normative democratic theory to explain what, if anything, would be wrong with a single-member legislature.

II. SHRINKING AND EXPANDING FACTORS

A. No Expansion without Quality

In the remainder of this essay, we will look at several factors that might be thought to press toward larger numbers and several that might press toward smaller numbers. The aim is only to make a beginning toward comparing the significance of these factors when taken together. There are bound to be other factors that bear on the question of numbers and other points to be made even about the ones I consider here. I emphasize this in order to guard against construing any of the arguments here as intended support for any practical proposal. The points I make here are far too preliminary and incomplete for that purpose.

Before looking at particular expanding or shrinking factors, it will help to lay out a simplified picture of how these countervailing considerations might be usefully compared. The primary simplifying device I propose is to imagine only three sizes, to be vaguely construed as regency, representative assembly, and referendum. This framework yields two places where an expanding or a shrinking factor might apply: between regency and representative assembly, or between assembly and referendum. We can leave the numbers involved fairly vague for our purposes, but let us assume that the referendum size is in the millions and the representative assembly size is between, say, a hundred and a few thousand. Figure 10.1 summarizes these points. Before looking at the specific shrinking and expanding factors, notice that countervailing factors have no general tendency to resolve in a middle space between the polar extremes.

In Figure 10.1 consider range A, the choice between small and medium numbers, or between regency and assembly. Suppose the shrinking and expanding factors resolve so as to push to the medium numbers. But then what would prevent them from resolving in the same direction in range B, the choice between

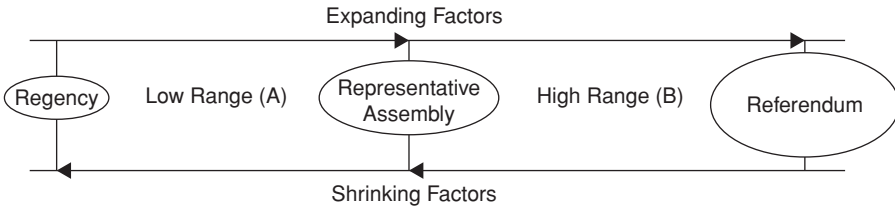


FIGURE 10.1. Expanding and shrinking factors.

medium and large numbers? What would stop the expanding factors from outweighing the shrinking factors? The same question can easily be put starting from the other direction. If shrinking factors outweigh expanding factors in range B, pushing toward assembly as against referendum, why wouldn't they continue to prevail in range A, pressing all the way to regency?

Of course, we will have to look more closely at the factors to see how they might resolve. The point here is just an introductory one: there is no general reason to assume that countervailing factors will resolve somewhere between the poles. Sometimes they do. If I have some reason to bring a large suitcase, in order to fit more clothes, and some reason to take only a small suitcase, which is easier to carry, these might resolve in favor of taking a middle-sized suitcase, compromising between the countervailing factors. But in other cases, the stronger factor might simply prevail. The stronger team in a tug of war might be only slightly stronger, but that will not prevent it from pulling the other team all the way over the goal line. Countervailing reasons can operate this way as well: there might be some reasons to write a long book, but some reasons to write a short book. It is by no means guaranteed that these will resolve in favor of a middle-length book.

Consider, then, a list of several considerations that might be offered in favor of larger numbers:

Fair deliberation: fairness to all views. Apart from any tendency to produce good deliberations or outcomes, each person is owed a hearing.

Coverage: representation of all interest perspectives. Each person's interests should be entered into deliberations if voters are to make an informed decision.

Condorcet: aggregative knowledge. Other things equal, if voters are better than random on the choice at hand, under majority rule voters will make correct decisions more often if they are more numerous, apart from any benefits of discussion.

Collective wisdom: inclusion of all reason perspectives. Different people bring different perspectives to public discussion, enhancing the epistemic quality of the process.

Three of these four, excepting only fair deliberation, suggest that larger numbers of participants are supported by the higher quality this would lend to the

outcomes or at least to the content of the deliberation. The first, fair deliberation, is put forward by Waldron as a nonepistemic account of the rationale for large numbers in the assembly, and I criticize his argument shortly.

Incidentally, there is no institutional necessity that the voters and deliberators be the same set of people, and some interesting questions arise if we contemplate distinguishing them. But here, in order to focus on certain points, we will assume that they are identical.

It is hard to think of expanding factors that do not rely on quality considerations. The familiar idea of procedural fairness to all participants makes no reference to quality of deliberations or outcomes, but nor does it have any apparent tendency to support larger numbers. There is no reason a regency could not be procedurally fair to all members of the larger polity. Suppose the members were chosen by lot, for example. Who does this unfairly favor? If that is a fair procedure but an objectionable one, the objections must be on grounds other than procedural fairness alone.

It might be argued that larger numbers than regency can be supported on the grounds that they are required in order to get a statistically representative assembly and that this rationale requires no appeal to the idea that this improves the content of the deliberations or the outcomes. But if that is so, what *is* the reason for having a statistically representative legislative body? To ensure that no quality considerations are moving us, suppose that we happen to know that, as it happens, even in the statistically representative body no outcomes or arguments will arise beyond those that would have arisen in a regency. Now, with those quality considerations out of the picture, what reason is there to have a representative assembly? At this point it is natural to say that people have a right to have their point of view represented, even apart from whether this improves the content of the deliberations or the outcomes. This, I take it, is Waldron's rationale, a kind of fairness to views.

B. Waldron's Fairness to Views

Waldron directly considers the question of why representative assemblies should be large.⁸ He thinks discussion is central to the explanation, but not because of any tendency of discussion to promote wise decisions.⁹ For Waldron, *large assemblies air a wide range of citizens' concerns, and this is important as a form of fairness to citizens whose disagreements run deep*. Individual rulers or small boards of regents would not air as broad a range of views, unfairly privileging the views of the powerful few.

⁸ Jeremy Waldron, "Speech: Legislation by Assembly," *Loyola Law Review* 46 (2000): 507–34.

⁹ In *Law and Disagreement*, Oxford University Press, 2001, Waldron gives a number of reasons for avoiding the appeal to epistemic value, especially his claim that no account of this value could be widely enough accepted by citizens with such deep and wide disagreements. I discuss this argument in "Waldron on *Law and Disagreement*," *Philosophical Studies* 99, no. 1 (May 2000): 111–28.

For Waldron, the point is not the sheer number of views represented, but the institutional effort to let *more of the people* have their views represented, whatever those views might be. It is a kind of respect to take people into account “as active intelligences and consciences.”¹⁰ Waldron is clear that he is contrasting the fairness of a large assembly to any emphasis on the epistemic value of such a process. He explicitly puts aside Aristotle’s idea that a large number of people can come together to achieve a better understanding than any could have alone. The fairness embodied in large assemblies is, in Waldron’s view, an explicitly nonepistemic kind of fairness.

Certainly, it would be plausible to say that a procedure is unfair if participants have *unequally accurate views of their own convictions or interests* when the vote is taken, and deliberation before the vote might be held to reduce this kind of unfairness. One problem with this approach is that it has not avoided epistemic claims for the process after all. On this view, a fair majoritarian process is one that aggregates expression of informed preferences, not simply brute preferences, and *the process transforms brute preferences to informed ones*. More precisely, the process has two phases: deliberation and voting. The deliberation phase is not recommended on grounds of its fairness but on grounds of its ability to transform the inputs in a valued way. The voting phase is one way of giving each person an equal chance of determining the outcome (though not the only way) and could be called fair on this basis. Since Waldron’s recommendation of large assemblies on grounds of fairness appeals crucially to the airing of a wide variety of views, the deliberative phase is crucial to his conception of the process. If he explains the value of that phase in terms of people becoming better informed, this is an epistemic function and so not a matter of the kind of nonepistemic fairness that he hopes is a sufficient explanation for large assemblies.

A second problem for this fairness-based approach is that what is normally troubling about unequally accurate interest views or unequally informed preferences is not mainly the unfairness this might involve. Fairness alone would seem only to require that no one’s view of his interests be more accurate than another’s; it cannot tell us whether we should rectify the erroneous views or instead reduce the accuracy of the more accurate. The unfairness of the process, distinguished carefully from any more epistemic or instrumental value, would be removed either way. It is not fairness, then, that underlies the impulse in favor of a process in which voters are well informed about their interests. Having pointed this out, though, we might still ask whether a plausible account has to appeal to the epistemic value of the procedure with respect to the quality of the outcomes, rather than (or in addition to) only with respect to the quality of the inputs.

On Waldron’s view, after the wide range of views have been given a fair hearing, a vote is taken in the assembly, and a majority or plurality of some specified size prevails. Even if we allowed that a fair process of social decision

¹⁰ Waldron, “Speech,” p. 529.

must involve public deliberation, why then proceed by majority rule rather than a random choice from all post-deliberation views, or even from all possible social choices, or some randomly generated list? A procedure in which the outcome is randomly chosen in one of these ways looks, on its face, not to treat any participant unfairly in the procedure. It seems objectionable only for its epistemic irrelevance.

Giving a person the chance to enter her views into public deliberation prior to a majoritarian procedure can certainly be, as Waldron says, a way of expressing a certain kind of *respect* for the person. And giving everyone something approaching an equal chance of this kind can express a kind of equal respect. This in turn may seem to be more accurately described as a form of fairness than as a device of collective wisdom. The question is whether this strikes us as any valuable form of respect even if we purge the scene of all traces of epistemic value. The idea of fairness to views is difficult to understand without assuming that the goal is a deliberation or outcome that is more responsive to the genuine balance of applicable reasons. It is crucially different, then, from other appeals to procedural fairness in which these quality issues are left completely aside.¹¹

C. Quality Grounds for Expansion

I doubt, then, that there is any plausible account of why the numbers should be larger than a regency that refrains from any claims about the salutary effect of the larger numbers on the deliberations or decisions. Without defending the more quality-based rationales, I will simply suppose for expository purposes that they succeed in supporting a preference for larger numbers than regency. We will later turn to the question of whether there are shrinking factors that countervail this support.

Several questions arise if we look at range B in Figure 10.1, the larger range involving the choice between representative assembly and referendum. One question is whether there are new expanding factors at that level. I will simply assume that there are not. Another question is whether the expanding factors in the small range are still expanding factors in the large range. We are not yet asking whether they are countervailed by other factors, but only whether there is a *pro tanto* or defeasible quality advantage in large over medium numbers. Another way of asking this is to inquire whether the advantages of large numbers somehow run out or precipitously fade away above the middle range. Consider three quality arguments for middle rather than small numbers:

1. Coverage: Representation of All Interest Perspectives. The idea of a regency naturally prompts the objection that only a small subset of relevant points of view are given any political influence. Middle-sized numbers (assembly size)

¹¹ For more discussion of these matters see David Estlund, *Democratic Authority*, Princeton University Press, 2008, pp. 93–96.

will tend to represent a larger subset, which seems to be an improvement that would tend to result in less injustice. Now the question is whether it would still be a further improvement of the same kind to move from the middle numbers of an assembly to the large numbers of rule by referendum (so far as feasible, in a mixed system).

Clearly no further improvement would be possible if all relevant interests were already represented by a body of the assembly size. This would not be guaranteed by size alone and might require further arguments about the value of elections or of statistical representation. However, it is implausible in any case to think that the number of relevant interest perspectives is smaller than the number of people. The idea that, for some balance of reasons, we should settle for a representation of only a subset of relevant points of view is not at all the same as the far less plausible idea that the interest perspectives that are not represented are not relevant.¹²

Suppose there is a diminishing marginal value of the following kind: for each representative added, fewer people get their relevant interest perspective thereby represented. This might be so under some arrangements, although it would require some mechanism whereby the largest constituencies get represented first. While both election and lot might be argued to have this effect, I will not pursue the question here. In any case, if the number of relevant perspectives is equal or close to the number of citizens, the goal of representing as many relevant interest perspectives as possible does remain an expanding factor even in the high range. Whether or not it is countervailed by some shrinking factor is a question taken up later.

2. Condorcetian Aggregation. The expanding factor based on Condorcet's Jury Theorem,¹³ consisting in the epistemic value (under certain conditions) of larger numbers of voters, has a similar profile. There is no reason to think of it as dramatically weaker in either the large or the small range. There is a diminishing marginal epistemic value of extra votes, but in our simplified model we cannot say that the marginal extra voter matters significantly less in the high range than in the low range. We can be sure it matters very little in the higher parts of the high range, since the closer the group competence gets to 1 the less difference there is to be made even by a very large number of additional voters. It follows that the marginal value must diminish, but how fast it diminishes will apparently depend on how close the average individual competence is to .5. For example, if it is far above .5, the group competence will get very close to 1 even at the moderate size we're calling the assembly. So marginal votes cannot be worth a great deal above that size. But if the average

¹² The cases of interest perspectives and reason perspectives might be different on this score. See Jon Elster's discussion of this in Chapter 7, this volume.

¹³ For explanations of the basics of the Jury Theorem and some applications to democratic theory see Estlund, *Democratic Authority* (which includes a critique), and Robert Goodin, *Reflective Democracy*, Oxford University Press, 2003.

competence is only slightly above .5, the group competence might still be a long way from 1 even at a size far above the assembly level. I doubt there is any basis for supposing the average competence to be, say, .6 rather than .501. Since we are simplifying to only two ranges, we might summarize this uncertainty, combined with the fact that there must be some diminishing value, by saying this expanding factor is only modestly weaker in the high range. It remains an expanding factor.

3. Collective Wisdom: Deliberation among All Reason Perspectives. The expanding factor of the value of public reasoning among a large and diverse set of participants seems again to operate in the large as well as in the small range, leaving aside for now whether there are countervailing factors. The reason is similar to that in the case of coverage. Just as the number of relevant interest perspectives approximates the number of citizens, why think that the number of relevant reason perspectives is any smaller? Again, there may be some institutional arrangement in which the marginal representative brings to the table the reason perspectives of fewer citizens. Still, this remains an expanding factor unless, above middle numbers, marginal representatives failed to bring in any new reason perspectives at all. This is extremely doubtful. Whether or not there are good reasons on balance for sticking to the assembly size, it is hard to see what basis there could be for thinking there are significantly fewer reason perspectives than there are citizens. I count this as a (*pro tanto*) expanding factor even in the high range.

D. Shrinking Factors

We turn now to several candidates for shrinking factors: considerations that support smaller numbers. Something might be a shrinking factor in one range but not the other, so the two ranges require separate consideration in the case of each factor. First, though, we will see that most of the candidates fail to count as shrinking factors after all. In considering the shrinking factors, I will consider not only whether they are indeed shrinking factors, but also, if they are, how they might weigh up against the quality-based expanding factors we allowed earlier.

1. Pragmatic: Pure Direct Democracy Fails Utterly, on Pragmatic Grounds. We have seen that pure direct democracy is infeasible in its demands on citizens' time and productive energy. This might seem to suggest that referendum sets the number or fraction of the citizenry who participate in legislation too high. But all it really shows is that referendum can feasibly be used only in a mixed system in which some fraction of questions is handled by other means. Once that is assumed, the pragmatic problem with deciding some appropriate fraction of issues by referendum evaporates. It turns out that the problem is not too many people, but too many issues. We will assume, then, that pure direct democracy is not an option and that only a feasible number of issues will be

put to referendum if referendum is used at all. The pragmatic shrinking factor disappears.

If we are assuming a mixed system, and supposing referendum were to be used for some fraction of issues, there would remain the other issues to be handled by some smaller number. The question would remain whether those issues should be decided by assembly or by regency.

A distinct pragmatic consideration that might seem to favor shrinking is the idea that in a larger assembly the incentives to inform oneself and participate become so small as to outweigh the expected value. If so, this would encourage free-riding on informed others, leading to a decline in participation and in individual competence.¹⁴ Notice, however, that the picture is different for members of an assembly than for ordinary voters in several respects. First, assemblies fall within a fairly narrow range of sizes (as Elster shows in Chapter 7, this volume). The choice of assembly size may not make an appreciable difference on the voter's incentives to participate, the chance of casting a deciding vote being very small in any case. Second, once you are already a member of the assembly, voting itself is almost costless. Third, the size of the group doesn't obviously affect the incentives to become an informed and effective speaker. Such a speaker might have just as much chance of swaying a decisive fraction of voters in a large assembly as in a small one. If everyone wanted to speak all the time, there would be reduced chances to speak in a large assembly. But this is normally not the case, and there might be ample time for anyone who wishes to speak to do so even in a large assembly (even if not in an imaginary enormous one of many thousands).

I conclude that shrinking the size of the assembly within the normal range has no obvious advantages with respect to encouraging either the participation or the competence of the members.

2. Preeminence: Some Few Are Significantly Wiser. The idea of preeminence reflects the familiar thought that a well-selected smaller number of rulers is likely to rule more wisely than a larger number of ordinary people. It is surely the most important traditional antidemocratic idea, but even if democracy is assumed there is a need for representation on at least some issues for pragmatic reasons. Then the question can arise, without any antidemocratic implications, as to whether a small number of expert representatives will do better than a large number of less expert representatives.

The *Federalist* papers relied heavily on the idea that legislators would be the best and brightest among us, or at least to the maximal extent possible. This *preeminence* argument (alongside the pragmatic and professionalism arguments) for elected representatives provides a reason to stem the expansion from representative assembly to direct democracy.

This raises a difficult question. Since, as I have argued, invidious comparisons of the political wisdom of citizens are precluded by liberal republicanism's

¹⁴ Jon Elster discusses this in Chapter 7, this volume.

constraint of public reason, we must decide whether the claim that election produces an epistemically superior set of representatives involves precluded invidious comparison. (All we need to mean by “superior” here is that they have epistemic features that more than compensate for the presumed epistemic loss involved in the drastically smaller number of participants as compared with direct democracy.) Is the preeminence argument available within public reason? Public reason precludes our identifying any given features that make them superior, but it does not obviously preclude our saying that voters will tend to select superior people. Still, we would need some basis for this that did not appeal to any invidious bases of comparison.

Elections may tend to choose social superiors. But the idea that social superiors have superior moral and political wisdom is a central example of the kind of invidious comparison that I have claimed is open to reasonable rejection.

Manin argues on a priori grounds that election produces representatives who are perceived by voters to have, to a rare degree, some set of features that are deemed by voters to be desirable in a representative.¹⁵ He calls this an “aristocratic” implication of elections that distinguishes them from certain other methods such as lottery. But the argument gives us no reason to suppose that the features being sought have any epistemic value, and in any case it claims only that elected representatives will be perceived to have the rare and desirable features, not that they will actually have them, as Manin clearly notes. So Manin’s argument would be no basis for thinking that election produces representatives with sufficient epistemic advantages to offset the epistemic loss involved in the smaller number of participants in a representative body.

On the other hand, if, as we are supposing, the point of having a numerous assembly is that collective deliberation has some epistemic value, and this claim is supposed to be available to public reason, then it would be initially plausible to suppose in parallel fashion that collective deliberation about who would be an epistemically superior representative is itself epistemically effective, at least under certain favorable conditions, and available to public reason. This avoids identifying any nonepistemic feature of candidates, which is selected for by elections, and then claiming, invidiously, that people with that trait are morally or politically wiser than others. Yet it would still suggest that elections have some tendency to select the better candidate. However, this idea leads to a puzzle that reduces its plausibility.

If a set of people can select a subset that is epistemically better despite the loss in numbers (and possibly also a loss of epistemically valuable diversity), the subset could presumably do the same. They could select a smaller subset yet. This sub-subset could do better than the subset, but they could also select a further subset (a sub-sub-subset) that could do even better, and so on. In the end, there would result a regent with a strong claim to epistemic superiority. Call this the *problem of the shrinking assembly*.

¹⁵ Manin, *Principles of Representative Government*, 132–49.

The idea that deliberative bodies have epistemic value cuts both ways: they have some epistemic advantages over smaller groups or single individuals, but they presumably would then also have the ability to select epistemically good smaller groups or individuals. Which epistemic effect is greater so far as can be determined within public reason? Notice that an argument that prevents the shrinking assembly will also tend to count against using an assembly at all rather than the larger body of sovereign citizens as a whole. It is hard to see, then, how a preeminence argument for elected representative bodies could be contained to prevent it from justifying the unattractive institution of regency instead. There may be other considerations that allow the first shrinkage but not the second, but so far it is not clear what they would be.

If things have the general structure I have described, either we should think that electoral preeminence favors regency or we should conclude from the implausibility of the supposition that the successively elected regency would rule best, that there was no effect of electoral preeminence even at the first stage, shrinking from referendum to assembly. It is important not to confuse preeminence with professionalism, the very different factor that emphasizes the epistemic benefits of being a legislator as a full-time job. I turn to that factor next. But if we put professionalism aside by supposing that everyone would have the same time and experience to devote to legislation, is it so clear that election would select significantly wiser people than a random selection? That is what electoral preeminence, by itself, supposes. Since, so far as I can see, it would also give rise to the shrinking assembly, I am tentatively inclined to doubt that there is any shrinking factor in the idea of electoral preeminence. Nonelectoral grounds for preeminence are bound to rely on invidious comparisons of a kind that are precluded by the liberal conception of political justification.

3. Professionalism: Time and Experience Promote Quality. Professionalism is the idea that those who can develop experience in the job and devote themselves full time to it will rule significantly more wisely as a result. This could be a shrinking factor, since it is plain for pragmatic reasons that not everyone could fully acquire the epistemic advantages of professionalism. Leaving legislation to those who can might more than compensate for the epistemic loss from smaller numbers by the increased ability of the smaller number of professional legislators.

There is no problem of a shrinking assembly in this case, since the maximal benefits of professionalization would seem to be available to numbers in the middle range (or more) rather than to only some very small number. So professionalization might be a shrinking factor in the high range, though apparently not in the low range. In the high range, it is countervailed by the quality-based value of larger numbers. The question, then, is whether the lost value of numbers is outweighed by the increased value of professionalization.

On the other hand, there are difficult questions about whether the supposed epistemic value of professionalization relies on invidious comparisons of the

kind that are precluded by a liberal conception of justification. The analogy is quite close to the suggestion that those with more education (of some specified kind) are more capable of ruling wisely, a consideration that led no less of an egalitarian liberal than John Stuart Mill to recommend giving extra votes to the educated (among others).¹⁶ The reasons for rejecting Mill's scheme apply reasonably directly to the claim that professional rulers are sufficiently wiser to outweigh the disadvantage of their smaller numbers. I can sketch those reasons only briefly here.

Consider, then, a literacy criterion for voting. From the set of the literate, pull a demographically representative sample, removing the sample error with respect to race and class. Now give double voting power to everyone in the repaired sample, and so half as much to all illiterate citizens (and also to others who were excluded as a consequence of repairing the sample with respect to race and class). In this case, the cognized and demonstrable sample biases are removed, and the beneficial trait of literacy remains. The scheme strikes me as objectionable, but on what grounds? My contention is that objections to this scheme on the grounds that there may remain important sample errors of which we are unaware are not so unreasonable that they should be disqualified. That is, they are decisive against the appeal to a supposed overall epistemic benefit, from the standpoint of the wisdom required for good political rule, of being among the literate portion of the general citizenry. If this seems right in the case of a literacy criterion, why not also for any educational criterion? And if education cannot publicly be held to ground superior ruling wisdom, is professionalization different in any way that would allow it to escape the problem? More argument is required on this point, but for reasons of this kind I doubt that professionalization is available as a public basis for attributing greater political wisdom. In that case, professionalization is not available as a shrinking factor at all.¹⁷

4. Pathologies of Deliberation: Large Numbers Disrupt Rational Deliberation.

The final candidate for a shrinking factor is the idea that the epistemic benefits of public political deliberation are lost when the number of participants gets too large. A lack of space prevents our looking at any specific pathological mechanisms or processes in any detail. It is commonly pointed out that, in direct democracy, voters face too many issues to deal with them rationally. That objection is out of place here, though, since we are assuming the system must mix some direct democracy with some rule by smaller bodies, precisely to limit the demands on the time and rational attention of voters. So the number of issues they have to face can be modulated pragmatically.

One more pertinent common complaint about large numbers of participants is the claim that civility diminishes with the social distance between interlocutors, so it will be very thin indeed in large mass deliberations. Another worry

¹⁶ Mill, *Considerations on Representative Government*, 1862, ch. 8.

¹⁷ For more see Estlund, *Democratic Authority*, ch. 11.

about large numbers is that the expense of communicating to the whole electorate gives an unwarranted advantage to those who control wealth or media access. I return to this point shortly.

Stepping back from the specific pathologies that might accompany large numbers, let us consider the stakes. Suppose that pathologies of deliberation outweighed the benefits of expanding factors in the high range, and so on balance the assembly size is to be preferred to the referendum size. This would count against having a mixed system, since it counts against having any referenda at all.

Elections are, in effect, referenda themselves on the question of who shall be a representative. If the balance of considerations shows that referenda are seriously impaired by deliberative pathologies, the lesson might also be applied to the context of election as well. These considerations might, then, offer some support for a pure representative system with the assembly chosen by lot, to avoid the pathologies in the deliberations around election contests. On the other hand, there might, in principle, be pathologies about voting on issues that are less pronounced when the decision is between candidates.

Elections of members to representative assemblies have a mitigating feature: typically, the larger polity is divided into numerous sectors or districts so that voters in one district do not face the same slate of candidates as voters in other districts. As a result, the number of participants in any single election is much smaller than the community at large. It might seem, then, that it has been misleading to associate direct democracy with large numbers. Representatives can be directly chosen with only a fraction of the overall citizenry participating in any single choice.

The idea of districting is certainly important for our topic since it has the potential to mitigate any pathologies of large numbers even in a direct democratic procedure. Still, it does not automatically inoculate assembly elections from whatever deliberative pathologies come along with very large numbers. In modern states there are many millions of voters. The number involved in each election to an assembly seat is roughly equal to the number of voters divided by the number of assembly seats. We are, somewhat arbitrarily of course, considering the assembly size to be no larger than around a thousand members. Simplifying again, let us suppose the deliberative pathologies are not significant at that size, which is why assembly is initially favored over referendum with respect to deliberative pathologies. But suppose the pathologies are serious in larger sizes. This means that the pathologies would still be serious in districted assembly elections in polities with more than a million voters: a thousand assembly races decided by a thousand voters each. A larger community than that has too many voters per race, but dividing such a community into more districts increases the size of the assembly to levels where the deliberative pathologies are triggered. These numbers themselves are not to be taken seriously, since we have no clear account of the alleged deliberative pathologies or the numbers of participants required to trigger them, and to what degree, and under what institutional conditions, and so on. But the more abstract point

does not depend on the actual numbers: the fact that assemblies are chosen from districts is by no means a way of avoiding whatever deliberative pathologies are involved in large numbers. They would have that value only in political communities that are very small by modern standards.

It would be natural next to consider nested levels of decision so that small groups select representatives to join with other representatives, still partitioned into small groups, to select the next level of representative. To take just one example: Suppose 1,000,000 voters are carved into 10,000 districts, yielding 100 voters per district. This in turn yields 10,000 representatives. But divide them into, say, 100 groups of 100 representatives per group. Have each of these 100 groups select several of their members, say 3, to serve in the final assembly. This yields an assembly size of 300, without any race having been decided by more than 100 voters. Such a nested arrangement has obvious interest for avoiding any pathologies of races involving too many voters. On the other hand, there are innumerable other issues about how such a scheme would operate, and so this single virtue is not any significant basis for recommending such an arrangement.

The idea of nested levels of deliberation suggests a possible reply to the very idea that there are pathologies of deliberation at large numbers. It might be argued that actual deliberations in large communities informally assume a nested structure. Very few participants are actually on the national stage. The image of each citizen deliberating with all other citizens on national questions is misleading in this context. Some citizens do speak to all others, as when they publish their opinions in a nationally accessible way. Still, only a tiny fraction of citizens participate in public deliberation at this level. Most citizens do deliberate with others about political matters, but in contexts ranging in size from a small circle of friends, to neighborhood or community groups, to publications at the level of a city newspaper. Above this size, the number of participants is very small, very possibly falling short of a size at which deliberative pathologies are serious. And at any of the lower levels, too, the numbers may be small enough to avoid the pathologies.

Again, this point is of obvious importance when it comes to evaluating the pros and cons of large numbers. But even if it is true as far as it goes, it leaves out an important sense in which these informally nested deliberators are all in the same boat. In the districting case, the smaller nested groups in districts were not deliberating on the same issue as voters in other districts, since the candidates would be different across districts. In the informal nesting case, we ought to be assuming that the issues are common to all the voters across the nation. After all, the informal nesting point is offered as a reason to deny that there is any need to break the issues up in the way that districting does. So we are imagining national referenda addressed in common by all citizens, even if the number of people addressed by most citizens is far smaller than the number of voters in the nation. The implication, I think, is that while some deliberative pathologies may yet be avoided, others will still be in play.

One sort of pathology that arises when a large number of voters are addressing the same choice is that it is very expensive and yet very effective to advertise one's point of view to the whole large group of voters. This can tend to give an unwarranted advantage to individuals or groups that control either great wealth or access to large communications media. There are empirical complexities about this, since groups with broad support might turn out to be the best at raising money. Still, other things being equal, it seems clear that groups with support among rich people have an additional advantage. I leave aside the empirical questions in order to consider what the implications of this would be if it were true. One implication is that the informal sort of nesting just described would still present one large mass audience for advertising one side or the other on the issue of the national referendum. The advantage of wealth, if there is one, would not be diluted by that kind of nesting. It would be somewhat diluted by the kind of nesting characteristic of assembly districts, since there is no national contest but only hundreds of local contexts. On the other hand, the existence of political parties blurs this distinction somewhat, since assembly elections are often partly framed as contests between national parties, in which case a mass audience for mass advertising of the party's point of view reinstates the advantages of controlling wealth or media access.

III. CONCLUSION

I do not want to impose too tidy a conclusion, since the exercise has not been of that nature. Instead, let me put forward two propositions that I hope receive some support, albeit inconclusive, from the miscellaneous points that have been made in this essay.

First, the (attractive) principle that no individual is morally more important than another from a political point of view is at some argumentative distance from the (dubious) principle that none ought to have more formal political power or influence than another (evidently precluding even rule by assembly). And neither of these is the principle of democracy, which holds (as I understand it) that political power is to be authorized by (not necessarily always exercised by) a sovereign body in which each citizen has an equal and inalienable role.

Second, democratic citizens face complex choices about how numerous the authorized rulers should be, although pure direct democracy is and always has been out of the question. If we wish to criticize the institution of, say, regency, we will need to do without the indefensible charge that it is simply undemocratic.