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Recursive Representation in the Representative System

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Jane Mansbridge
Harvard Kennedy School

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Recursive Representation in the Representative System

Jane Mansbridge*

I. Introduction

The representative system in a large number of democratic countries is coming under increasing strain. To take only one example, the 2016 referendum vote in Britain to leave the EU (“Brexit”) underscores the fragility of the representative system both in that country and the EU. That the elected representatives in Britain decided to hold a referendum itself demonstrates the widespread belief that for many among the public the existing system of electoral representation in Britain was not sufficiently legitimate to carry the weight of such a foundational decision. The referendum itself revealed that the referendum majority in Britain differed dramatically from majority opinion among the democratically elected representatives. Nor did the elected representatives help the deliberation in the press and the country meet high deliberative standards. Many Brexit voters also considered laughable their “representation” in the EU. They believed that they and their country’s interests were not adequately represented in the EU and that insensitive bureaucrats in Brussels were harassing them with unjustifiable regulations. None of these weaknesses are surprises.

Britain may leave the EU, but it cannot return to the past. Nor is it possible to return to the past in the practice and theory of representation. I argue here that the very conceptions of representation forged in the eighteenth century are inadequate to the world of the twenty-first. Over the past century, human beings acting together have forged new practices that do not map easily onto the categories of earlier understandings of representation. New practices require new theories.

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Old understandings of hierarchy in representation, the categories of trustee and delegate, the denigration of descriptive representation, the derivation of all legitimacy from consent, and the requirement that representation and lawmaking legitimately take place only in the legislature no longer make much sense in today's world, if they ever did. It is time to scrap these concepts and focus our intellectual attention on how to conceive of, and therefore guide, the partial production of legitimacy in representation in the complexity of today's world. In this short paper I will make only two moves in this direction, stressing the rightful interdependence of forms of representation in the electoral, administrative, and societal realms, and foregrounding the importance of recursive communication in all three realms.

The context is a crisis in legitimacy. In other work I have argued that as our global and intra-national interdependence grows, we face a growing number of collective action/free-rider problems and therefore a growing need for state coercion. That coercion should be normatively legitimate, so we can live in a state that is morally grounded, and perceived to be legitimate, so that it may be effective. Yet while the need for legitimate state coercion is rising, the supply is declining. Every ounce of both normative and perceived legitimacy is becoming increasingly precious.¹

Readers need not accept my strong claim -- that increasing interdependence produces more collective action/free-rider problems that need state coercion as a solution -- to agree that recursive representation may in any context help increase democratic legitimacy. Yet my conviction of a crisis, stemming from my analysis of the reasons that we will henceforth require increasing amounts of state coercion, provides the reason for my own current intense attention to the problems of legitimacy in representation. I will therefore take the first few pages of this paper to sketch out the logic by which I arrived at that conclusion.

To begin, why *state* coercion? I have analyzed elsewhere how the logic of the free-rider problem (or collective action problem) is triggered by free-use goods – goods that, once produced, anyone can use.² This logic, uncovered between 1950 and 1965, shows us that in large societies, where reputational sanctions are insufficient to get people to contribute to free-use goods, state coercion must produce much of the incentive to contribute. Without state coercion we cannot get clean air, clean water, fish in the sea, trees in the forest, or a stable climate, let alone the more narrow

¹ Mansbridge 2014a. I thank Claus Offe (personal communication) for the language of supply and demand and for thoughts on the causes of the decline in supply.

² Although free-use goods are often called “public goods” or “non-excludable” goods, both of those terms are in large and small ways technically inaccurate (Mansbridge 2014a).

goods that eighteenth century theorists identified (but did not realize were conceptually free-use goods) of law and order, defense, and infrastructure such as roads and harbors.³

Why a *growing* need for state coercion? First, our increasing interdependence, nationally and globally, requires effective regulation, backed by state coercion, to facilitate the market and protect both consumers and workers. Almost every new transaction and contract requires state backing to guarantee mutual compliance. Many new transactions create externalities that require state regulation to control (e.g., exports require stronger and more transparent food safety standards than the local market demands). Second, we must now ourselves produce vital free-use goods -- such as clean air, clean water, a reproducible number of fish and trees, and a stable climate -- that in an earlier era “nature” provided.

Coercion (the threat of sanction or the use of force) is intrinsically a bad, its point being to make you do something you would not otherwise do against your (first-level) will. Thus in generating enough coercion to produce the needed free-use goods, states should craft that coercion so that it is minimal, does not drive out intrinsic incentives to promote collective goods (e.g., incentives deriving from other-regarding public spirit and the interest, excitement, and enjoyment of the work), and to the greatest degree practicable emerges locally to respond to local needs. Such crafting defines good state coercion; it does not eliminate the need for state coercion. Even the participatory, bottom up processes of voluntary supply and locally based coercion that Nobel laureate Elinor Ostrom made famous almost all need to be “nested,” in her word, in a larger state coercive apparatus.⁴ On the scale of a nation-state, some “periphery” of coercion must usually surround the “core” of solidarity, duty, intrinsic interest and enjoyment that otherwise induces people to contribute. That periphery of coercion, designed to be as narrow as possible, provides an ecological niche in which the motives of duty and solidarity in the core can survive and thrive.⁵

To be effective, the necessary state coercion should be perceived to be legitimate. To be rightful, that coercion should be justifiable to those affected. In both perceived and normative legitimacy,

³ Lord’s similar analysis (forthcoming) uses the language of externalities.

⁴ Mansbridge 2010, 2014b, on Ostrom 1990.

⁵ Mansbridge 1990. For recent work on innate altruism, see, e.g., Rand and Nowak 2013; Warneken et al. 2007; for duty, see the classic works of Sen 1977 and Hirschmann 1985; for other intrinsic motives, see, e.g., Fourier [1808-1837] 1971 on “attractive labor” (*travail attrayant*); for the problem of extrinsic motivations driving out intrinsic, see Deci and Ryan 1985; for “nudges,” using primarily preconscious psychological incentives rather than overt coercion, see Sunstein and Thaler 2008 and for criticism Waldron 2014 (one’s stance toward nudges may differ depending on whether the alternative is explicit state coercion or no coercion, and on how valuable one considers the transparency of explicit state coercion).

the legitimacy is a matter of *degree*, not a binary. No law, regulation, or state act can be fully legitimate, because the democratic norms that legitimate the law are all *aspirational* (or “regulative,” in Kant’s word); they are standards at which to aim, but which cannot, or can only rarely, be reached fully. This aspirational quality applies, for example, both to the ideal of equal power that animates the practice of an equal vote and the ideal of no power that animates the practice of good deliberation.⁶

Both perceived and normative legitimacy have *plural* sources. Legitimacy may derive from fair procedures, such as free and equal elections (“input” legitimacy). It may derive from just and good outcomes (“output” or “performative” legitimacy). It may derive from fair and just administrative lawmaking and the application of the laws (“throughput” legitimacy). It may derive from justification.⁷ Although occasionally input legitimacy derives directly from the people – through referenda in some countries, and through direct face-to-face assemblies in small New England towns in the US, the cantons of Glarus and Appenzell Innerrhoden in Switzerland, a handful of kibbutzim in Israel, the “horizontalist” movement structures in Argentina and elsewhere in Latin America, and direct internet democracy in some of the new social movements and political parties in Europe -- all current democratic attempts to establish on-going input legitimacy in large polities depend on some form of electoral representative democracy. This is the form of representative democracy that is now so severely under strain.

How to *relieve* this strain? I argue that we must look to all three realms of electoral representation, administrative representation, and societal representation, and in these realms restructure current practices to facilitate *recursive communication* between represented and representative. In this process, each realm can be supplemented with imports from the others. In normative theory we should recognize and value from the perspective of recursive representation many of the new representative practices in all three realms that have already evolved to meet our changing needs.

What has *changed*? Advancing education and familiarity with democracy has undermined old assumptions of hierarchy in representation along with the (always somewhat confusing) categories of trustee and delegate. A growing acceptance of pluralism has undermined the old denigration of descriptive representation while validating a cacophony of competing voices. The growing complexity and extent of the regulation required has undermined the assumption that

⁶ Mansbridge et al. 2010, p. 65, n. 3.

⁷ See, e.g., Scharpf 2003 on input and output legitimacy; Beetham and Lord 1998 for performative legitimacy; Schmitt 2014 on throughput legitimacy, Cohen 1989, Chambers 2003 on justification. Although I usually use the word “justice” to apply to outcomes and “legitimacy” to apply to procedures, this terminology is not universal; I thus adopt Scharpf’s much-used terminology here.

representation and lawmaking legitimately take place only in the legislature. Collectively, over time citizens in democratic societies have responded (although still inadequately) to the growing need for legitimate state coercion by moving away from these old assumptions in practice without developing a theory that would legitimate these moves. Some new practices have formal legal legitimacy but little perceived legitimacy. Some have perceived legitimacy but little normative legitimacy. To guide the evolving practice and provide tools for evaluating it, political theory must elaborate both more nuanced ideals and more helpful standards for practice. This paper, which adopts an *interactive* perspective on the three realms of self-governance, legislative, administrative, and societal, and stresses the legitimating qualities of *recursive* representation, takes only one small step in this direction.

II. *Recursive communication in the representative system*

Michael Saward (forthcoming) has suggested a conceptual map of existing relations of representation that helps make sense of the larger representative system in which state electoral representation is embedded. He proposes “political representation” as the largest and most inclusive category, within which is nested “democratic representation” (including non-electoral societal democratic representation), within which is nested “state based ‘representative democracy.’” He points out that each realm interpenetrates the other.⁸ I adopt this general idea, with a few modifications. I focus on the two categories of *electoral* representation and *administrative* representation within “state based ‘representative democracy.’” When I discuss *societal* representation, I include both internally democratic and nondemocratic forms. I address only the appropriate normative structures for democracies, leaving aside the monarchies, theocracies, rule by meritocracy, and other forms of state organization that would fit into Saward’s most inclusive category of political representation. In each of the three interpenetrating realms of electoral, administrative, and societal representation, I argue that democratic norms apply to both the *internal* represented-representative relationship and to the *external system* of representation within which that relationship is embedded. Leaving aside for this paper the crucial points that *democracy* requires rough equality among the citizens and that *democracy* requires the capacity to act, and although I think that in the long run and more broadly the health of democracy depends on the communicative characteristics of the representative *system*, including recursive communication among the citizens and among the

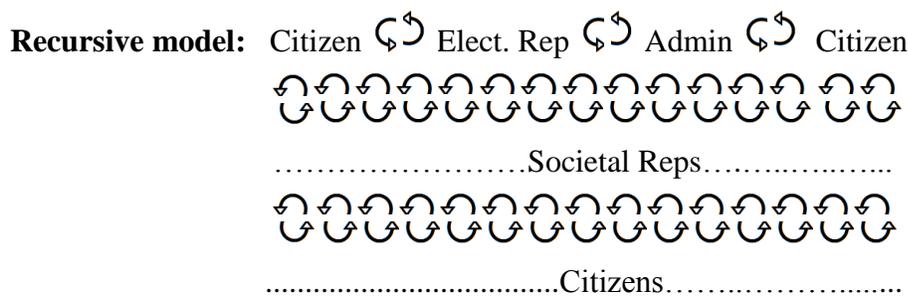
⁸ Saward (forthcoming), p. 11, emphasizing this liminal interpenetration. Saward’s conceptual map could easily incorporate international representation, with his category of “state-based” representation referring to the state-like structures that provide legitimate coercion in the international realm. For simplicity, my analysis focuses on the national realm and ignores judicial representation within this realm. For an excellent discussion of international reputation, see Lord (forthcoming).

representatives, I focus here primarily on one relatively narrow ideal, mostly internal to the representative/represented relationship: the ideal of good *recursive communication*.⁹ I do so partly because the topic has been neglected and partly because I think that lack of recursive communication is one cause of the strain in democratic representative systems that may be open to some remediation.

Within the large category of “state based ‘representative democracy,’” the standard model of democratic electoral representation works on the assumption that the voter chooses and influences the representative (either legislative or presidential), who then chooses and influences those who administer the laws, who then apply the laws to all who fall within their legal purview.

Standard model: Voter → Representative → Administrator → Citizen

The normative model I propose involves recursive communication and societal representation all along and inside the categories of this standard line. It requires more and better recursive communication between elected representatives and their constituents, more and better recursive communication between administrators and those to whom they are applying the law, more and better recursive communication up and down the line between societal representatives, elected representatives, administrators, and citizens, and more and better communication between legislatures, administrators, and the societal realm. The societal representatives may or may not in practice be democratically organized.¹⁰ But in democracies, a set of ideals regarding deliberation should apply throughout the entire representative system.



⁹ These internal “intersubjective” (Disch 2011, 106) relationships are embedded in and partially constituted by the larger external representative system, a relation that places limits on the very concepts of “internal” and “external.”

¹⁰ They may thus fall into either of Saward’s two outer circles. See below for an argument that the more closely the state consults and adopts the advice of societal groups, the more those groups should be democratically organized internally.

In this revised model, recursive communication is critical for maintaining a normatively justifiable and perceptually legitimate relationship between represented and representative, including the mutual constitution of each by the other.¹¹ The deliberative ideals that normatively should inform that communication include mutual respect, coming as close as is practical to the absence of power (e.g., manipulation), and inclusion.¹²

A. *Electoral representation*

In the recursive communicative democratic ideal, both citizens and individual representatives or political parties should hear one another, communicate well with one another, and change one another for the better through their interaction. Melissa Williams first articulated this ideal, writing of accountability that

the representative's accountability requires a movement back and forth between consultations with constituents and deliberations with other legislators. ... [The representative should] engage in a project of persuading her constituents of the reasons for her judgments. At the same time...she should further revise her judgments in the light of her discussions with them.¹³

Recursive communication is thus more than “two-way” communication, although the two-way imagery more accurately describes current reality, even at its best. In the realm of electoral representation, for example, Michael Neblo and his colleagues give the name “republican consultation” to “communication between citizens and their representatives in which the representatives seek *input* from their constituents in forming agendas and in advance of their formal votes, as well as [making] efforts to *explain* their votes to constituents post hoc” (2010, 6,

¹¹ See Disch 2011(citing Pitkin 1967), 2012, 2015; and Saward 2010 on representatives' claims and other actions creating, mobilizing, and in other ways “constituting” their constituencies.

¹² For a more extended summary of these ideals, their evolution from “first” to “second” generation, and the continuing contest over their meaning, see Mansbridge 2015 and Bächtiger, Dryzek, Mansbridge, and Warren forthcoming. Throughout that evolution, theorists have maintained consensus on the importance of the two aspirational ideals of mutual respect, which includes listening for difference as well as commonality, and absence of power, which includes rejecting threats and manipulation (i.e., undermining the others' autonomy by, e.g., intentional deceit or unintentional presentation of choices).

¹³ Williams 1998, 231-2. The normative goal is for citizens to “have a better chance to be heard, understood, and have an impact on the thinking of all of their elected and appointed representatives, while conversely, those representatives have a better chance to be heard, understood, and have a productive impact on the thinking of the constituents” (Mansbridge 2005, 13). See also Urbinati 2000, 2006 on advocacy and representation.

my emphasis). Both input and explanation are usually one-way. If each responds to the other, it is usually indirectly. The first cycle of hearing, understanding, and response is rarely repeated.¹⁴

Recursive communication between representatives and constituents is not easy, and there are tradeoffs with the other work that representatives are expected to do. In the Single Member Plurality (SMP) electoral system that characterizes the United States, and on the federal level in which each member of the House of Representatives has about 650,000 constituents, a representative's trying to explain a vote in the face of a well-funded advertising blitz may simply make constituents angry. As one representative said about his vote in the legislature against his own perception of the public interest, "Very frankly, if I had a chance to sit down with all of my constituents for 15 minutes and talk to them, I'd have voted against the whole thing. But I didn't have that chance."¹⁵ Normative and perceived legitimacy both suffer when constituents do not understand what the representative is doing and why, while the representative does not understand, except through a circle of political activists, the media, or occasionally a survey, what the constituents want and why.

To my knowledge, only one researcher has gone into the field and asked constituents, in an open-ended way, what they wanted from their elected representative. This group of only 28 constituents at one point in time (1997-98) in one small region (upper New York State) in the US said that the main thing they wanted from their representative was communication. They stressed again and again their desires that the representative listen to and be available to them.¹⁶ This small in-depth study reinforces Richard Fenno's conclusion in 1978, also based on the United States:

Responsiveness, and hence, representation, require two-way communication.

Although the congressman can engage in this kind of communication with only some of his supportive constituents, he can give many more the assurance that two-way communication is possible....

¹⁴ In "response," I include the possibility of saying, "I have heard what you said (which is a, b, c, and am not persuaded."

¹⁵ Kingdon 1981, p. 48, quoted in Mansbridge 2003, p. 520. Note the one-way locution, "talk *to* them," which taken literally would almost preclude the possibility of his constituents convincing him that they were right, even in part.

¹⁶ Grill 2007. So too a majority of African-Americans in the United States have indicated that they prefer legislators who spend time on district-based service more than lawmaking (Tate 2004, ch 6).

Fenno concludes: “Access and the assurance of access, communication and the assurance of communication – these are the *irreducible underpinnings of representation*.”¹⁷

In countries other than the US, and where electoral systems direct attention away from the internal represented-representative relationship and toward the external characteristics of the system, constituents’ desires that representatives listen and be available to them as individuals may be less strong. If this is so, more recursive communication would not generate greater perceived legitimacy. Normatively, however, good democratic representation must rest in part on the capacity of representatives to hear, to respond, to explain legislative actions and to act on citizens’ responses to those explanations. As Iris Marion Young put it,

“[W]e should evaluate the process of representation according to the character of the relationship between the representative and the constituents. The representative will inevitably be separate from the constituents, but should also be *connected* to them in determinate ways. ...Representation systems sometimes fail to be sufficiently democratic not because the representatives fail to stand for the will of the constituents but because they have lost connection with them. In modern mass democracies it is indeed easy to sever relations between representatives and constituents, and difficult to maintain them.”¹⁸

In recursive communication, representatives can deepen their constituents’ understandings of the issues and incite them to action, while constituents, ideally, can deepen the understanding of their representatives and incite them to action as well.¹⁹ As noted, good recursive communication should include the characteristics of good deliberation, particularly the base of good mutual deliberation in mutual respect. Facilitating recursive communication -- in which both representatives and constituents take in what the other is saying, update, revise, and respond on the basis of their own experience, then listen to the others’ response -- requires us to restructure and supplement electoral representation as well as recalibrate our democratic norms.

¹⁷ Fenno 1978, 239-40, emphasis in original.

¹⁸ Young 2000, 128; also pp. 129-30: “A representative process is ...better to the extent that it establishes and renews connection between constituents and representative....” Melissa Williams discusses how constituency and representative mutually constitute one another (1998, 203-5).

¹⁹ On inciting, see Hayat (forthcoming).

i. *Restructure*

Electoral systems affect representative communication. With all their faults on the dimension of systemic political equality, Single Member Plurality (SMP) electoral systems produce more incentives for the representatives to listen to and speak with constituents than closed-list Proportional Representation (PR) systems and perhaps even open-list PR systems.²⁰ On the other hand, closed-list PR systems allow parties to balance their tickets to produce more descriptive representation, which in turn usually fosters communication. Normatively, the degree and quality of recursive communication in the representative relationship should affect how we judge one system in comparison to another. Empirically, we could use greater study of the degree and quality of recursive communication in different electoral systems. Practically, we can find ways to restructure all of these systems, and particularly closed-list PR systems, to facilitate representative/constituent interaction.

Types of representation also affect communication, but again we have little empirical work on how. In earlier work I have noted the advantages, when feasible, of what I have called *gyroscopic* representation.²¹ In the ideal pure case of gyroscopic representation (all real cases being mixed, none pure), voters select representatives on the basis of their judgment of the representatives' internal motivations and goals, place them in office, and deselect them when the representatives' goals or capacities are no longer congruent with the voters' needs. They do not try to change the representatives' behavior through monitoring that behavior and threatening sanctions in the next election. Gyroscopic representation is possible only when some representatives have internal motivations and goals roughly congruent with the voters' own and the voters have sufficient basis in the representative's past actions and reputation for making warranted judgments about the representative's internal motivation. This form of representation has some characteristics of traditional "trustee" representation, but without its hierarchical

²⁰ Open-list (preferential) PR systems, especially in interaction with vulnerability in the next election, also create incentives for time spent in the constituency and constituency service. (For an introduction to the literature on constituency work, see Heitshusen et al 2005, André et al 2015, and Arter 2011; thanks for these and other references to Claire McGing, currently studying constituency service in Ireland). To my knowledge, the representative work of constituency service has not been analyzed from a normative perspective, although such work probably provides an important source of communication, particularly between working class constituents and their representatives. Schmitt notes that in Europe, unitary (as compared with federal) and SMP (as compared with PR) systems have more incentives for elected representatives to listen to and speak with their constituents. As for the EU, it has "elaborate... coordinative discourses" but only "the thinnest of communicative discourses" between political leaders and the public (2006 p. 40). On the capacities of different electoral systems for accountability and conflict negotiation, see Warren (forthcoming).

²¹ Mansbridge 2003; the name refers to a ship's internal gyroscope, which keeps it on course; see also Mansbridge 2009 on the "selection model" of electoral representation.

element: the voters may simply want a representative “like me.”²² The main contrast is to *anticipatory* representation, where the voters try to control the behavior of the representative through monitoring and anticipatory threats and promises, while the representatives adjust their behavior to forestall potential sanctions in the next election.²³

Gyroscopic representation has the normatively attractive quality of generating and reflecting warranted trust between constituent and representative, a feature that both allows the representative some flexibility²⁴ and in some ways promotes recursive communication.²⁵ When voters want to communicate, they may engage more deeply, informally, and continuously when they think the representative is “like them.” In gyroscopic representation, however, the voters have little prudential incentive to monitor the representative’s behavior or pressure them on policy because they have good reason to believe that the representative will be pursuing, with integrity, the policies the voter prefers. Nor has the gyroscopic representative much prudential incentive to contact the voters. By contrast, with anticipatory representatives the voters have an incentive to organize in on-going pressure groups to communicate with the representatives, while the representatives, trying to anticipate what the voters will want in the next election, have many incentives to initiate contact, thus opening up a potential field of recursive communication in which they can try to influence the voters to be more favorable to them in the next election while the voters can convey to the representatives their possibly changing needs and demands. Any move from anticipatory to gyroscopic representation in the electoral realm should thus emphasize preserving and opening up channels for recursive communication.

All else equal, *descriptive* representation (often gyroscopic) seems to improve communication between representatives and constituents, particularly for the more marginal members of the polity and particularly in the context of a history of communicative distrust. In the United States, where Black Americans have a justified historical mistrust of Whites, Black constituents are more likely to contact Black than White representatives. The same may well be true of other

²² Mansbridge 2011.

²³ In European PR list systems, the gyroscopic element is likely to be large, because the representatives are usually chosen by party officials with good information about the representatives’ inner motivations, goals, and principles. In such systems the political party, more than the individual representative, anticipates the voters’ sanctions in the next election and adjusts accordingly.

²⁴ In some cases, however, constituents may desire inflexibility and accordingly select an inflexible gyroscopic representative to represent them.

²⁵ That trust in turn facilitates negotiation at the legislative level, because to be effective, negotiation must be conducted behind closed doors, preventing the monitoring necessary for anticipatory representation (Warren and Mansbridge et al., [2013] 2015).

marginalized groups.²⁶ Even when the descriptive representation is “passive” (the representative simply having a background similar to the represented in relevant respects) rather than “active” (acting consciously as an advocate for those with similar background features), restructuring electoral systems to make descriptive representation more likely would almost certainly increase the number and quality of communicative channels for marginalized groups.²⁷

A more radical communicative restructuring could reposition the *representative as interlocutor*. Even today in the British Parliament and the US Congress, the representatives themselves do not make much policy. In Britain, the cabinet does most of this work. In the US, according to one report, the Congressional staff do 95 percent of the policy work.²⁸ If we stop thinking of the representative’s main job as policy-making and reconceptualize it as communicating, we would provide the representatives with relatively expert staff, allocate more staff time to policy-making, and expect the representative, prepared by the staff on policy issues, to dedicate most of his or her time to communicating with other representatives and with constituents. Running for election and winning is a better test of capacity to communicate than it is a test of policy expertise. A restructured division of labor, in which the elected representative did more communicating with both constituents and other legislators while the staff did more policy-crafting, would make recursive communication more possible. Although a significant departure from current norms, the model of *representative as interlocutor* might produce better representation and perhaps even better policy.

Another radical restructuring, again departing dramatically from current norms, would aim at decreasing the ferocity of competition among political parties. When an electoral system encourages half of the representatives in a closely balanced two-party system to disparage or even condemn the achievements of the other half, the citizens’ perceptions of legitimacy may become understandably low. By contrast, when electoral systems encourage many parties to join in a grand coalition, each party has sufficient stake in the agreement to want to persuade its constituents that the whole package is worthwhile. Normatively, much in the normative judgment depends on whether the representative/constituent persuasion is manipulative or based on warranted trust, how recursive is the communication, and how important for the

²⁶ Gay 2001. For a contingency analysis of when descriptive representation most furthers democratic aims, see Mansbridge 1999; one of the most relevant contexts is a history of communicative distrust.

²⁷ See note 54 below and text on passive and active descriptive administrative representation; see Mugge forthcoming for passive and active descriptive electoral representation.

²⁸ “Ninety-five percent of the nitty-gritty of work of drafting [bills] and negotiating [their final form] is now done by staff” in the federal legislature (Senator Edward Kennedy 2009, p. 486, quoted in Kaiser 2013, p. 28).

communicative goals of fostering dissent and encouraging critical reflection are, on the one hand, liveliness of the contest for power and, on the other hand, the rest of the context of civic life.

ii) Supplement

In SMP electoral systems, *surrogate* representation (in which representatives represent constituents outside of their districts), currently serves as an important non-electoral supplement to district representation. Surrogate representation may not derive from any explicit claim by a representative to represent anyone outside her district. When in the late 1980s an administrator for Mickey Leland, a Black member of the U.S. Congress, exclaimed in frustration, ““What people don't understand is that Mickey Leland must be the [Black] Congressman for the entire Southwest,”²⁹ she did not mean that Leland had ever made any explicit claim to represent the entire Southwest. She meant that throughout the Southwest US, Black citizens from other districts and even states turned to Leland to help represent their interests. In a 2013 study, Black state legislators responded more often than White legislators to a request for help from a person outside their districts with a Black name.³⁰ In both of these cases the representative claim originated with the represented.³¹ Although representatives do not usually initiate communication with their surrogate constituents, they open up through their policy stances or similar backgrounds opportunities for communication to and from citizens who feel relatively unrepresented in their own districts. Because those represented are not constituents, the communication in surrogate representation is not likely to be deeply recursive unless the surrogate constituents are also represented by advocacy groups, which are better equipped to carry on a more continuous conversation with the representative.

Any time spent in communication with constituents is time not available for policy-making, consulting lobbyists, or talking with donors. A more formal supplement to the electoral representative relationship could both promote representative-constituent communication and save the representative time by creating discussion groups with randomly-selected constituents who could deliberate recursively on an issue through the internet with their representative. In such an experiment in the US, 95 percent of those who participated in a deliberative session like this said they considered such sessions “very valuable to our democracy” and wanted to repeat

²⁹ Swain 1993, 218, quoted in Mansbridge 1999.

³⁰ Broockman 2013. For “promissory,” “anticipatory,” and “surrogate” representation, see Mansbridge 2003.

³¹ See Saward 2010 for examples and an analysis of the dynamics of a “representative claim” by non-elected representatives.

the experience with other issues.³² Most participants in sessions like these also talk about the session later with family members or friends, including those who disagreed with them on the issue, thus spreading the communication.³³ By using the internet this way, a representative even in a nation as large as the US could be in recursive communicative touch with about a third of his or her voting-eligible constituents every six years.³⁴ If such processes were to become a regular part of the way representatives did their work, and citizens learned about these experiences through friends, media, and the school system, the communicative quality of the representational system should increase both normatively and in the realm of perceived legitimacy. Although this form of communication is recursive – sometimes highly recursive -- within the session, it would probably be a one-time, not recursive, experience for almost every participant.

Randomly selected mini-publics (groups of citizens randomly selected to represent the population and brought together to deliberate over a weekend or a year) could provide another recursive communicative supplement to electoral representation.³⁵ Because of the expense involved in producing a sufficiently representative sample with materials agreed upon by opposing parties, experts, and trained facilitators,³⁶ such mini-publics are best used contingently,

³² Neblo et al., 2010, pp. 2, 9. When offered the hypothetical opportunity to participate in such a deliberation, racial minorities, lower-income people and younger people -- all groups whose members usually participate less than others in electoral politics -- were more likely than others to want to meet and talk with their representative. Offered an actual opportunity, responses were more uniform across groups (only the unemployed, individuals with children under 12 in the house, and, with a smaller correlation, those with lower incomes expressing greater willingness to a statistically significant degree). When it came actually to showing up at the on-line session, only the unemployed and those with children under 12 in the house (i.e., those who might have had more time to sit before a computer at home) were significantly more likely than others to participate (p. 11, Table 2). Participation in such experiences produced gains in feelings of political efficacy and in information about the policy discussed. Future studies could test whether participants gain in the subtlety of their thinking about the issue and the member of Congress learned from the experience.

³³ Minnozi et al. 2015: participants discussed the session with approximately 1½ others.

³⁴ Michael Neblo, personal communication. The time cost to the Member would be less than an hour per session (two hours a week), far less than Members spend now consulting with special interests, while the monetary costs of setting up the software, headphones, and outreach interface could be less than \$100,000 a year for the entire Congress.

³⁵ “Random selection” in practice always includes an element of self-selection after the random draw. The best designs minimize self-selection by providing strong incentives to attend (Mansbridge 2010).

³⁶ Assemblies designed for accurate representation by lot are expensive. Fishkin (personal communication) indicates that the cost of a well-structured Deliberative Poll, with balanced materials, experts, facilitators to bring out minority opinion, a sample of 200 or more to make meaningful descriptive representativeness possible, and sufficient incentives to bring out those least likely to attend spontaneously, exceeds one million US dollars; Warren (personal communication) indicates that the British Columbia Citizens Assembly of 161 citizens, also relatively well-designed for representativeness

when elected legislators need public legitimation for a potentially damaging vote³⁷ or the elected legislators might have interests that diverge from those of the public.³⁸ They must also be embedded, as Neblo puts it, in “a larger system of democratic contestation,” including public review and criticism, to reduce the likelihood of intentional or unintentional elite cooptation.³⁹ Although discussions are admirably recursive within such mini-publics, the question of how such fully developed mini-publics would link communicatively with representatives has been not been fully explored.

Ironically the one current supplement to electoral representation that currently most enhances recursive communication between the representative and some constituents greatly undermines both normative and perceived legitimacy. This is the supplement of money: the financial dependence of electoral campaigns on individual citizens with significant monetary resources. In the United States, which of all the advanced democracies is most vulnerable to this form of political inequality, representatives in Congress currently actively reach out in person, often four hours a day, to past and potential donors, through phone calls and at fundraising parties, to solicit the advice of those donors on the laws the donors think the country most needs. Communication between candidates for office and the donors outside their district (one segment of their “surrogate” constituents) is often far more frequent, personal, and recursive than communication between the candidates and their district constituents.⁴⁰ Perhaps relatedly, the representatives in Congress vote more in the interests of the wealthy than in the interests of the majority.⁴¹ And perhaps relatedly, in the United States two-thirds of the citizens in 2012 said they believed that “Rich people buy elections,” compared with only 17 percent in Germany.⁴²

and including 6 meetings on weekends over the course of a year as well as many public hearings, also exceeded one million US dollars.

³⁷ In Rome, the elected representatives knew that hospitals had been overbuilt and some needed to be closed, but no representative had dared advocating closures for fear of electoral sanction. A Deliberative Poll moved heavily in the direction of such closings, thus allowing representatives to use the citizen deliberation to legitimate their votes (Fishkin 2009, p. 151).

³⁸ The rationale for asking a randomly selected British Columbia Citizen Assembly (BCCA) to recommend a new electoral system after a year of deliberation was that elected representatives cannot often be trusted to vote without undue self-interest on changing the electoral system that has brought them to power. The BCCA recommendation garnered more than 50 percent of the votes in a subsequent referendum but failed because the mandated threshold was 60 percent (Warren and Pearse 2008).

³⁹ Neblo 2015, pp. 181; see 179-189.

⁴⁰ Barber and McCarthy 2015.

⁴¹ Gilens and Page 2014.

⁴² Norris 2015.

iii. Recalibrate

The content and quality of communication between representatives and constituents in different systems of electoral representation has been both normatively under-theorized and empirically under-investigated. A recalibration of our theory and empirical study to forefront communication would begin by distinguishing communicative persuasion from strategic manipulation. It would recognize that unequal power inevitably accompanies communication, identify the most significant power resources in communication on both sides, and suggest institutional changes to facilitate greater equality along with greater recursivity. Such a recalibration would resist the common temptation to define politics only as power and conflict, or to see power or conflict-oriented analyses as more realistic than analyses that also consider persuasion, would consider the deliberative side of the representative-represented relationship valuable, and would analyze the capacities of differently organized democracies to enhance or undermine the recursive and deliberative quality of that relationship.⁴³

Although in everyday speech we often use the term “persuasion” to include power-based strategy and manipulation, I will stipulatively redefine the term here for analytic purposes to exclude power strategies and manipulation but include both what Habermas called the “force of the better argument” and emotionally based efforts to understand others and respond authentically to them.

On the broadest definition of “power” in general, as preferences and interests causing, or changing the probability of, outcomes,⁴⁴ all communication is intended to exercise power. In this paper, however, I use the term “power” to mean “coercive power,” namely one’s preferences and interests causing, or changing the probability of, another’s outcomes through the threat of sanction (involving the other’s will) and the use of force (changing the others’ behavior without engaging their will). In contrast, I define persuasive power (henceforth “persuasion”) as the capacity to cause, or change the probability of, outcomes through good argument and emotional insight.⁴⁵

⁴³ Other related recalibrations of normative theory, not stressed in this paper, would derive legitimacy from plural sources, recognize the communicative values in descriptive representation, and explore the ways that anticipatory representation and the “like me” forms of gyroscopic representation undermine in different ways the hierarchy inherent in the representative relation.

⁴⁴ More technically, this broad understanding of power (“power as capacity”) is “the actual or potential causal relation between the preferences or interests of an actor or set of actors and an outcome or the changed probability of an outcome,” a definition adapted from Nagel 1975 by adding “interests” and “set of actors,” and probability (see Mansbridge and Shames 2008, 624; Mansbridge et al. 2010, n. 44).

⁴⁵ See *Ibid.*

In human interaction, no persuasion exists without power, because the very words we must use to communicate draw from millennia of human practices that embed in those words assumptions, often hierarchical, of which we are not aware. Language thus encapsulates a form of force, working independently of the actor's will. The ease with which different members of society can draw upon these words also differs greatly from individual to individual in ways inflected heavily by the relations of domination and subordination in the society at large. Yet just as persuasion cannot exist without power, so conversely, in human interaction power never exists outside a field shaped by persuasion. All human beings grow up in a universe that they navigate in large part by relying on forms of communication grounded to some degree in the common interest of the communicating parties in mutually accurate persuasive communication.⁴⁶

Despite the inevitable presence of power in persuasion and vice versa, we can and do distinguish conceptually between “manipulation” (coercive power as force, often in the guise of persuasion) and persuasion.⁴⁷ And despite the well-known difficulties in distinguishing between these two in

⁴⁶ See Neblo 2015, pp. 89-91 on “buying into the game” of giving non-strategic reasons. More empirical and theoretical work is needed on the cognitive and emotional capacities required for listening to understand the meanings, the intents behind the meanings, and even the preferences and interests behind the intents in another's speech.

⁴⁷ For the distinction between manipulation and persuasion, see, e.g., Neblo 2015, 71-76. For formulations that subsume manipulation under the “force” in being moved against one's will, see Bachrach and Baratz 1963, 636; Lukes 1974, 32. Lukes later rightly considered it a “mistake” to identify persuasion with common interests as the sole criterion for the distinction (2005, 12, 109). In a book-length treatment of the manipulation/persuasion distinction, which notoriously is not “easy to operationalize” (Mansbridge 2003, p. 519, Disch 2011, p. 101, Neblo 2015, p. 72), Klemp parses the normative spectrum into the three categories of *deliberative persuasion*, which includes openness to revision, sincerity in intention, and a focus on the merits; *strategic persuasion*, which includes unwillingness to revise, selective use of facts and arguments, and an orientation to winning; and *manipulation*, which includes the intent to deceive, unwillingness to revise, insincerity, and the use of “hidden or irrational force,” which overwhelms or bypasses “the listener's capacity to choose” (2012, pp. 47-62). Although the descriptor “irrational” needs more unpacking (because all communication is to some degree irrational) and intent is not absolutely required (Nagel's improvement on Dahl's definition of power is based on this point), Klemp nevertheless makes a start on operationalizing these distinctions by mapping them on to concrete examples of political action among three organizations of the Christian right in the US in the early 2000s. For critical discussions, including the role of intentional and unintentional psychological framing in communication, see Lisa Disch 2011 (p. 101 and *passim*), 2015 and forthcoming. A year before Bachrach and Baratz, Habermas formulated the idea of “the force of the better argument” ([1962] 1989), later concluded that “reaching understanding” was the “inherent telos” of speech ([1981] 1987), and distinguished sharply analytically between “communicative” and “strategic” action ([1983] 1990). One need never have read Habermas, however, to cede that the aspirational (inherently unreachable) ideal of communication through persuasion in the absence of (coercive) power is both meaningful and conceptually distinguishable from manipulation, even though there are no pure cases of either, the lines in any case are often unclear or contested (particularly when the distinction involves a determination of individual “interests,” “intent,” or “rationality”), and the broadest meaning of the term

practice, the distinction in ordinary speech reflects a norm in favor of “persuasion” and against “manipulation” that, whether explicitly expressed or not, may be coexistent with human culture. In the represented-representative relationship, the normative standard for communication is non-manipulative persuasion, not as a form of interaction that can exist without power, but as an aspirational ideal, despite being always already embedded in and shaped by power. Thus in the model of recursive communication, the aspirational ideal is to come as close to mutual deliberative persuasion as realistically possible.

The meaning of communication in the recursive model becomes more complicated when we realize that the arrows of mutual communication are not only arrows of reciprocal power and continuing mutual influence, but also arrows of mutual constitution. Representatives help shape the represented; the represented help shape the representatives.⁴⁸ Both representatives and represented, although dwarfed in this process by many others outside the representative relationship, by themselves and in interaction also help shape the larger social and political system within which both act. Such mutual constitution is a feature of the larger human social condition, but it poses a conceptual problem for democratic representation as traditionally and linearly conceived. That standard model begins with a constituent’s pre-existing and static interests, which cause preferences, which ideally cause representative or legislative behavior (which then causes administrators’ behavior, which then affects citizens). As Warren (forthcoming, citing Disch 2011, 2015, and Montanaro 2012) points out, if the preferences of constituents are at least in part constituted by their representatives, it is hard to understand those constituents as purely “choosing and directing their representatives—authorizing them to stand, speak, or act on their behalf. Nor can they hold representatives accountable, since what people understand their interests to be are at least partially constructed within the representative relationship itself.”

The mutual constitution of everyone by everything would seem simply to pose no more than the familiar question of the possibility of individual autonomy⁴⁹ but for an important wrinkle: in

“manipulation,” shorn of intent (Mansbridge and Shames 2008), can cover many sources of power, including the many sources of systemic power in a political or social system.

⁴⁸ See note 11 above. Although some theorists have conceived of representation as “a recursive process: a movement from represented to representative, and a *correlative* one from representative to represented” (Laclau 2005, 158, cited in Disch 2012, pp. 604, my emphasis), most, including Pitkin herself (see Disch, *ibid.*) stress only the capacities of the representative to constitute the represented (e.g., Bourdieu 1984, p. 11, quoted in Hayat, forthcoming). Sayward 2010 (see Warren, forthcoming, p. 9) and Disch (*ibid.*) have more recursive views, Disch noting in particular the greater power resources of representatives in relation to most constituents.

⁴⁹ This problem may be our generation’s equivalent of the medieval conundrum of free will. For two excellent treatments of autonomy, see Hirschmann 1992 and Nedelsky 2012.

this relationship of mutual constitution, power is usually not equal. The external political and social system is structured in ways that give some individuals and groups more power to choose the words we use and set the frames of our thinking, including the interests we perceive as essential parts of our identities and those we perceive as humanly and politically salient. We cannot learn as human beings or as citizens except within these frameworks. Within them, “elites” by definition have more power than others. Electoral representatives figure among the many who, because of their privileged access to the means of communication or greater resources to craft those communications, will reach more people and have more impact.

Yet although in the co-creation of the process of representation elites in general have the cultural capital, the organizational resources, the microphone, and the attention of the media, those members of elites who function as electoral, administrative, and societal representatives of segments of the public are also particularly vulnerable to the constituting efforts of others, in this case the represented. To arrive at the positions in which they speak and act for others, representatives have often crafted themselves in gross and subtle ways to respond to the anticipated needs of the represented. Their publics have also, subtly or unsubtly, selected them for such good self-crafting. Even in the very course of speaking to and for others, in venues such as political rallies where the audience and the represented are the same, representatives are likely to select both old and new words, sometimes spontaneously, to respond to what the people for and to whom they are speaking want them to say. Such anticipatory, often preconscious, processes are hard (often impossible) to track.

Co-constitution is thus the human condition, but the conditions in which co-constitution occurs are to some degree under human control. Thus Fraser, Disch, Warren, Neblo, and many others have rightly urged us to work toward reducing the inequality and increasing the alternatives available in the larger social and political system. I shall return later to the question of whether increasing the degree of contest in the political system is always the right move.

Recognizing that the reduction of political and social inequality is a large and important goal, In this article I attempt something far smaller – no more than a recalibration in the weights we give respectively to citizen control and communication. Democracy requires voter control of the legislature, at least indirectly. Yet more control is not always and automatically better. If the situation makes relatively gyroscopic representation possible, then constituents can occasionally can select and deselect their representatives, not focus on actively steering them, and make their focus recursive communication with those representatives, as a matter primarily of mutual persuasion rather than power. As I wrote in an earlier work,

if the quality of citizen deliberation at election-time is good and if the electoral system makes it relatively easy both to maintain representatives in office and to remove them, then it is normatively quite consistent with democracy to leave them alone. Let us dislodge, normatively, the standard single-minded focus on voter control of representatives, with its across the board opposition to incumbency and obsession with turnover in office. When an initial selection has been a good one, neither voter control of the representative nor turnover [is] necessary for good democratic representation.⁵⁰

Whenever we can make good gyroscopic representation possible, instead of focusing primarily on control, monitoring, transparency, and accountability (in the recently popular sense of monitoring plus sanctions rather than giving an account),⁵¹ we can shift our sights toward greater recursive communication, recalibrating our normative and practical theory to stress institutions through which citizens can enter the democratic process on an equal basis, educate their elected representatives about conditions on the ground (including their own changing thoughts and emotions) and educate themselves, through their representatives, about the effects of their interdependence with other citizens. To create such recursive communication on a genuinely equal basis would require eliminating the massive structural and political inequalities that now distort both the electoral and the communicative features of all representative systems, in some countries far more than in others. Elimination of such inequalities is the aspirational ideal. As we try to move toward that systemic ideal, it is still possible, as a congruent but somewhat separate goal, to try to improve the conditions for recursive communication in the representative relationship.

B. Administrative representation

I cannot provide in this paper anything like a full discussion of recursive communication in administrative representation.⁵² I will say, however, that even when the electoral strand in the representative system is restructured and supplemented to create more recursive communication, it is still too weak a reed to carry the weight of all the legitimacy required for our growing needs

⁵⁰ Mansbridge 2005.

⁵¹ See Mansbridge 2014c on the distinction between “deliberative accountability” as giving an account and the more recent meanings of accountability reduced to monitoring and sanctions, along with an argument for, in appropriate cases, *transparency in rationale* in contrast to *transparency in process*. See also Phillips (1995, 145), Chambers 2003 on the core of legitimacy deriving from deliberative accountability, and Warren 2014 and forthcoming on “discursive accountability.”

⁵² For additional notes in this direction, see Appendix A.

for state coercion. Thus, when we see a “democratic deficit,” rather than looking first or only for solutions in the field of electoral representation, we should recognize and willingly incorporate into the representative system recursive communicative features in both the administrative and the societal realms, finding ways to make these realms more legitimate and more democratic.

A standard dichotomy separates politics, or policy-making, from administration, or the practical application of policy. Traditional representative theory gives the function of law-making to the elected members of the legislature and the function of implementing the law to the administrative arm. But, as been well-known for centuries, administrators also make law. The legislators may set policy guidelines, but administrators craft the contours of the actual legislation. The legitimacy of the law rests on the procedures for both making and applying it.

At the higher policymaking level, those who appoint administrators and the administrators themselves usually recognize their policy-making role. The normative legitimacy of administrators in making policy derives primarily from the formal delegation of powers by the legislature and the legislature’s continuing decision not to remove those powers. It also derives from lack of corruption in delegating the powers and choosing the administrators. It derives in great part from the quality of the justifications, or reasons, the administrators can give those affected for their decisions and actions. Yet even in the cases in which the formal processes of delegation and selection meet the highest standards of legitimacy and the justifications meet high rational standards for accuracy and relevance, other factors -- such as the current great volume and importance of administrative policy-making, the long lines of delegation required and consequent distance from the original legislative authorization, and the difficulty relevant publics may have in understanding the justifications -- mean that the law administrators promulgate requires additional support in normative and perceived legitimacy. In modern democracies administrative representatives have thus often instituted formal procedures for communication with the public both to improve the result and to increase the perceived and normative legitimacy of the decision. Those procedures deserve more empirical and normative attention.

In the standard democratic account, once the public has gone through a discursive period of opinion-formation and the elected legislature its own discursive period of will-formation, a public will emerges from the process that administrators then implement and reflect back to the public as the public’s will. In this model, the barrier between legislature and administration is a vital protection against domination. As John Locke put it, “The Legislative cannot transfer the

Power of Making Laws to any other hands.”⁵³ In the work of Jürgen Habermas and his progenitors, a barrier between state and society serves the same protective role.

Current conditions of interdependence and complexity make these traditional visions untenable and undesirable. The numbers and complexity of regulations required to solve free-rider problems today make it impossible for a legislature to enact anything with sufficient detail to be applicable.⁵⁴ Administrators at both the higher policy-making levels and the street level must fill in the blanks. At either of these levels, if they do not consult with the public in their policy-making, the policy they make will be of lower quality and have less normative and perceived legitimacy. A normative approach more congruent with today’s needs would make both the law-making function and the function of reflecting the public back to itself more recursive. It would be improved by greater capacities to explain to citizens the reasons for the legislation of both the elected and administrative realms and to find out from citizens what legislation at all levels they think they need. Recalibrating our understanding of the roles of administrators at all levels makes it possible to criticize administrative representation and suggest reforms that would make that representation, the resulting policies, and the eventual coercion more relevant to the citizens’ worlds, more effective, and more legitimate.

In circumstances when for exogenous reasons the civil service is already honest, competent, and acting in the overall directions that the public desires, what democracies need, in the realm of administrative representation as in the realm of electoral representation, is not necessarily more citizen control but more citizen capacity to initiate deliberation and *deliberative accountability* – not so much the capacity to monitor and sanction as a requirement that administrators explain the reasons for their actions, listen well to citizens’ disagreements or suggestions, and recursively respond. Administrators need to understand more how what they do affects the lives of the citizens on the ground and they need to hear it from the citizens themselves. For their part, citizens need to hear the ideas of the administrators in contexts where the citizens can pursue their questions, pressing deeply and interactively into the responses. Citizen power may be required to make administrators listen well, but in this case that power is instrumental to the goal of communication, not a legitimating feature of the system in itself. The power of citizens acting directly may independently increase the legitimacy of the democratic process as a whole, but in some cases it may not.

⁵³ Locke[1679-89] 1963; Habermas [1962] 1989; Lowi [1969] 1979. The language of opinion-formation and will-formation comes from Habermas [1992] 1996.

⁵⁴ As the US Supreme Court decided in *Wayman v. Southard* (1825).

At the “street level,” bureaucrats in all countries also make law. The police, teachers, social workers, even customs inspectors and clerks at the motor vehicles registry usually have some, sometimes considerable, discretion. When they use that discretion, they make law. For reasons much like those of administrators at the policy level, these street-level administrators sometimes engage the public in “co-producing” these laws. The police may institute “community policing” measures to bring the public into the decisions they make about how to put into effect their broader mandate.⁵⁵ The schools may rely for some decisions on Parent-Teachers Associations or their equivalents. Normatively, the mandate for greater recursive communication would encourage other street-level bureaucracies to devise institutions to consult citizens deliberatively and regularly. Such a mandate might mean restructuring administrative representation to be more descriptively representative of the relevant population, to give citizens more power to initiate communication from below, and to provide communicative incentives for administrators.

The democratic landscape is today dynamic and quickly changing, trying to adapt in practice to exponentially increasing interdependence and complexity. Recalibrating our understanding of administrative representation would allow us to accept, from a normative democratic perspective, some relative autonomy among administrators selected for their competence and public interest motivation, and provide deliberative counterweights to that autonomy by adding to present systems a greater responsiveness to informed public desires, a greater respect for public knowledge and perceptions among representatives and bureaucrats, a greater public voice in decisions, and a greater recursive capacity for mutual education, communication, and deliberation between administrative representatives and the public. In many such instances the arrows of control and communication may rightly bypass the electoral system to go directly from the citizens to those responsible for a policy.

Ideally, the causality can become in many cases recursive, with power and persuasion traveling in both directions and affecting the next moves of all the communicative partners. This ideal of democracy is deliberative as well as aggregative. It is educative rather than static. It respects all three crucial sets of actors in the political world – the citizens, the elected representatives, and the administrative representatives – and asks what settings will encourage all of them to develop their capacities in ways that foster critical intelligence and concern for the public good.

C. Societal representation

⁵⁵ E.g., Fung 2004.

Many of the supplements to both electoral and administrative representation suggested here come from the social, “private,” or societal realm.⁵⁶ This realm is often far less democratic and more susceptible to entrenched inequalities than the electoral and administrative realms. Perceived legitimacy in this realm may be high, because many still-held eighteenth century norms supported a market perceived, in contrast to the realities, to be “free.” Perceived legitimacy may also be high for several reasons -- because formal processes of policy-making in the societal realm often involve willing key stakeholders, private organizations are not expected to be subject to democratic standards, and the expertise of the groups involved may be or seem to be merely technical. Normative democratic legitimacy, however, may be low -- either because the societal representatives for different groups do not speak accurately for or are not authorized by or accountable to the groups for whom they speak, or because the larger system of societal representation is biased.

Because the societal sector is such a crucial piece of the larger representative system, it deserves significant normative attention. Yet at present normative democratic standards for societal representation are only beginning to be developed and are much in contest. Some developing standards apply to what I will call *internal* legitimacy problems within the represented-representative *relationship*.⁵⁷ These include problems of misrepresentation, authorization, and accountability. Other standards apply to *external* questions of bias within the *system* in which the representative relationship is embedded.

In both the internal/relational and external/systemic realms, democratic standards should become more demanding as the form of societal representation takes on a more formal relation to the state. Some societal organizations have powers *directly delegated* by the state. Some organizations *officially consult* with state agencies. Some organizations and individuals aim only to *influence* the state *informally*. Many organizations play more than one of these roles. The content and level of the standards required for the democratic legitimacy of these organizations and individuals should vary contingently with the closeness of connection to the state.⁵⁸ Our

⁵⁶ See Appendix B for further notes. The terminology for this sector is still unstable. The term “informal” representation is inaccurate because many of the organizations that provide societal representation have highly formal structures and are formally connected with electoral or administrative representation. The term “non-electoral” is empty and too broad, confusingly including administration. The term “private” is too restrictive, as many of these organizations have a semi-public character. I have adopted “societal” (Saward forthcoming) because although it has the connotation of “non- governmental,” it does not explicitly exclude mixed institutions. See Saward (forthcoming) on electoral and non-electoral, formal and informal, and the liminality of the entities in this and other sectors.

⁵⁷ I take the term “representative relationship” from Montanaro (forthcoming) and Warren (forthcoming).

⁵⁸ On normative contingency see, e.g., Mansbridge 2014c.

current norms regarding external, or systemic, bias are stronger and clearer than our norms regarding the internal governance of organizations. Public perceptions of legitimacy sometimes, but not always, follow this pattern.

At the level of *delegation* of powers, the strongest connection with the state, both elected and administrative representatives rely on representative institutions organized societally. Elected representatives rely, for example, on political parties. In most nations the state legally regulates the parties, although they are strictly speaking “private” entities; in the EU, parties receive state funding. Because the connection of societally organized parties with the state is strong, one would expect significant public concern with both the internal representative processes of the parties and their external systemic bias. This is what we see. Although internally in most nations the political parties have their own rules for selecting candidates, over time the public has become more concerned with these issues. In the US the public has favored, but not legally mandated, primaries over more informal methods of candidate selection. In Europe the public has favored, and sometimes even legally mandated, party gender quotas. Regarding external, systemic legitimacy, the public has also over time taken more interest in the degree of democratic bias that different party systems produce. When states decide to move from one electoral method to another, issues of systemic bias usually play a major role in the public debate.

Administrations also delegate many powers to the societal sector, although the nexus of administrative and societal representation has received less public scrutiny than the nexus of electoral and societal representation and the norms are correspondingly less well developed. Administrations can delegate powers to almost any societal organization, from a multinational for-profit corporation to a village non-profit. Sometimes governments create such private organizations in order to give them policy and enforcement responsibilities. Sometimes governments delegate their powers to existing private entities and simply enforce the rules those entities make. Sometimes administrations formally adopt the codes developed by private entities. Considering all three of these processes, Rudder, Fritschuler and Choi estimate that “Taken together, agency rulemaking and the policy decisions of private groups account for most policymaking in advanced societies.”⁵⁹ Accrediting organizations provide an example. In the United States, the federal government adopts the accounting standards of one private non-profit group, the Financial Accounting Standards Board, and gives another private group, the Financial

⁵⁹ Rudder, Fritschuler and Choi 2016, pp. 1, 4. Moving to the normative realm, they conclude, “To the degree that private groups are making public choices about values to pursue, they should be evaluated on the grounds of democratic legitimacy, including the organizations’ inclusiveness, transparency, and accountability in their government roles, just as government should be.” These norms need more scrutiny.

Industry Regulating Authority, the legal power to discipline the firms and individuals who violate those standards.⁶⁰ These private groups have their own internal mechanisms for selecting their officers, unregulated by the state and almost entirely ignored by the public. The question of whether these mechanisms incorporate systemic bias has rarely been addressed. Scholars are only beginning to develop norms for internal governance, recursive and otherwise, to apply when state administrators delegate powers to societal organizations.⁶¹

When we move from delegation to state *formal consultation* with societal organizations, the normative issues get even more complex. Elected representatives consult with lobbyists. Administrators often give specific societal organizations a privileged place, either formally or informally, in public hearings or in informal meetings. The EU consultative system works this way and so do many US agencies. There is probably a great deal more formal mandated consultation with the public in both electoral and administrative representation than there is formal delegation of lawmaking or enforcement capacity to societal organizations. Yet normative theory about representative democratic legitimacy in these processes of formal consultation is in its infancy. As that theory develops, both equality and recursivity should serve as legitimating features.

Finally, at the level of *informal influence* on the state, the way that societal organizations represent the public almost always falls far short of existing normative democratic standards on both the internal and the external dimensions. Much recent work in democratic theory has focused on the *internal* dimension. Nancy Rosenblum warns against “government intervention in the lives of associations” on the grounds of freedom of association and freedom to organize one’s association as one wants. We should seek democracy and accountability in private organizations through choice and exit -- the processes of “shifting involvements among associations – the *experience of pluralism* by men and women personally and individually.”⁶²

Often the private organizations, and even individuals, that influence the state in the name of those they claim to represent are what Montanaro calls “self-appointed representatives.” Although much of their effectiveness derives from recognition by powerful *audiences* such as the state, much of their legitimacy derives from recognition by the *represented*.⁶³ When the

⁶⁰ Rudder, Fritschler, Choi 2016, pp. 61-62 and ch. 4, passim.

⁶¹ See, e.g., Hirst 1994, Smith and Teasdale 2015

⁶² Rosenblum 1998, pp. 6, 17, 20, 25, 27, quoting Hegel, *Philosophy of Right*, ¶235, emphasis in original.

⁶³ For the role of the audience in representative claims, see Saward 2010. For self-appointed representatives, see Montanaro 2012 and forthcoming. Warren (forthcoming) also points out that while representatives may self-appoint, the “represented need to judge.” In some cases, however, recognition

represented publicly refuse to recognize the claim of an individual or organization to represent them, the audience to whom the representative claim is addressed (such as potential donors) also often wavers in recognizing that claim. Montanaro investigates the sources of democratic legitimacy in self-appointed representation, from “organizational authorization” to “discursive authorization,” both of which have a serial nature: “The representative voice of the self-appointed representative waxes and wanes with these serial and incremental authorizations.”⁶⁴ In judging the legitimacy of such claims, we might also add the depth and quality of recursive communication that the representatives have with those they claim to represent.

Both systemic and internal biases in societal representation are hard to correct. Even the internet, theoretically open to all and in practice sometimes responsive to interventions by the marginalized, significantly favors the verbally advantaged and the already well-connected (Hayat forthcoming). After 1830 in France, workers established newspapers edited and written exclusively by workers, such as *L'Artisan*, *Le Journal des Ouvriers*, and *Le Peuple*.⁶⁵ In the United States, from the mid-1920s to 1986 (when it merged with the *People's World*), the Communist Party USA newspaper *The Daily Worker* included columns and letters to the editor by workers, serving as an authentic, although censored, means of mutual communication. That paper was, however, subsidized by the Communist Party, in turn partially funded by the USSR in the Cold War. Although the current lack of working class descriptive representation on the internet and in the print media does not necessarily mean a lack of substantive representation, it suggests at least a potential problem of systemic bias.

We may conclude that in societal representation our democratic norms regarding the internal representative relationship are in flux, but those regarding the external representative system seem relatively clear: individuals should be represented societally either proportionally to their numbers within an existing democratic polity or proportionally to the degree they are affected. As in electoral and administrative representation, in societal representation the organizations to which the state delegates law-making powers, those the state consults, and those that influence the state, are deeply biased.⁶⁶ The closer a societal organization comes to influencing the state

and judgment by the represented is difficult or not possible, as with unborn generations (Whiteside forthcoming).

⁶⁴ Montanaro (forthcoming), p. 14. This ongoing and sometimes recursive process of authorization in societal representation contrasts with the singularity of the formal authorizing moment in electoral representation.

⁶⁵ Hayat (forthcoming). Hayat's careful phrasing is that “some workers, who were admittedly a minority,” established these papers. They were the informal representatives of those who did not edit or write for the papers.

⁶⁶ See, e.g., Schlozman, Verba and Brady 2012, Schlozman and Tierney 1986.

definitively, the more the public has a legitimate normative claim that the organization act to counter, rather than perpetuating, the biases in the representative system and that it organize itself internally along democratic, recursively communicative lines.

III. Conclusion

As the representative systems of many developed democracies come under immense strain, the distrust of many for government poses a challenge. That distrust undermines legitimate state coercion at a time when our growing interdependence and need for more free-use goods requires increasing state coercion to solve the resulting collective free-rider problems.

In this situation, a growing number of progressive thinkers are suggesting not new ways of legitimating state power but new ways of resisting it. The reason is understandable. As the free-rider problems we must solve increase, state power has increased. As state power increases, it is of crucial importance to develop increased capacities to resist it.

Yet resistance cannot be the only answer. It would be a mistake to identify the progressive normative agenda primarily with resistance, disruption, destabilization, and the multiplication of veto points against state power. These steps prevent state action. In the absence of democratic state action (the *kratia* part of democracy), the world would be far more unequal and open to oppression.⁶⁷

It is important in any democracy to “incite and sustain battles that make visible the arbitrariness of the inequalities built into the status quo.” It is also important to use state power, of necessity built, like every other social structure, upon these very inequalities, to promote both greater equality and the collective good. It is true that democrats should worry about “any reduction in the plurality of positions from which to contest power.”⁶⁸ Yet it is also true that democrats should worry about reductions in state power that are not carefully targeted to improve the lives of the marginalized or increase important liberties and rights. State power in democracies has the advantage of incorporating some formal egalitarian features and a normative apparatus with some egalitarian components. Societal power tends to lack these elements.⁶⁹ State power allows us to solve collective free-rider problems. Individual power tends to create those problems.

⁶⁷ See, e.g., Scott 2009 for arguments to the contrary.

⁶⁸ Disch (forthcoming), p. 19, 23.

⁶⁹ Nor is societal power alone able easily to change societal norms. Contemporary feminist practices have not, in fact, transformed the “relationship between masculinity and femininity without passing in any way through parties or the State” (Leclau & Mouffe 1985, 153, quoted in Disch (forthcoming), p. 25.

Democratic electoral, administrative, and societal representation allows us to make state power relatively legitimate. But an ideal in which “citizens connect with and distance themselves from the elected by pressing, checking and influencing them endlessly” would not necessarily accomplish that goal. Nor would it necessarily be every democratic citizen’s ideal. A constitution that “presumes disharmony, not harmony, disagreement, not consensus”⁷⁰ might also be contested as an ideal. An equally attractive ideal would calibrate the appropriate balance between “pressing...endlessly” and leaving the representative alone, or between disharmony and harmony as goals as a function roughly of the degree of common or conflicting interests in the constellation of interests on a particular issue.⁷¹

Given our great and growing needs for legitimate state coercion, the job of representing citizens democratically in all of the requisite decisions is crucial and large. To approach this goal more closely, we need to stop anchoring all democratic legitimacy in elected office. Instead of deploring the “outsourcing of the law,” let us use our human ingenuity to find ways of making electoral, administrative and societal representation not only more democratic but also more communicatively thoughtful and recursive, so that as citizens and representatives together co-produce their own and the public’s interests they do so in conditions close to those the citizens would approve, either hypothetically or in retrospect. Most developed democracies today have relatively good systems of electoral, administrative and societal representation. But relatively good is far from good enough. This paper has indicated some ways of restructuring and supplementing representation in all three realms to bring that representation closer to democratic norms, particularly recursive communicative norms. In the societal realm, so far the least exhaustively theorized, it has suggested that although internal authorization and accountability are important to democratic representation, we need as well a focus on system-wide normative ideals to guide and incite reform. We cannot understand those system-wide ideals if we conceive of legitimacy as based only in consent – unless we work out, which I do not do here, the normative conditions that would authorize a subtle form of what I would call *diachronic consent*, a tacit Burkean consent, based on good justifications and developed under good conditions over the centuries.

Outside the currently developed democracies, the greatest challenge today to democratic representation is no longer fascism or communism but the Chinese ideal that combines meritocracy and what I will call *demobenia*: government guided by the good of the citizens

⁷⁰ Urbinati (forthcoming), pp. 3, 4.

⁷¹ Mansbridge 1980.

(jarringly conjoining the Greek root “demos” and the Latin root “bene” or good).⁷² This system ideally represents the citizens’ interests through a system that combines fair meritocratic selection to positions of power, peer accountability, some local democracy and other methods for gauging citizen needs, and responsiveness based on the representatives’ internalized norms to “serve the people,” their underlying apprehension of sanctions from above for poor performance, and, possibly ultimately, some fear of collective citizen sanctions and disaffection. This representative ideal can be undermined in practice by favoritism, group power, fear, and group-think. It can be undermined by manipulating the methods or ignoring the results. The check to the representatives’ power based on an underlying fear of citizen sanctions can be undermined by increasing economic productivity, promoting nationalism, and suppression. Nevertheless the current Chinese system has found ways to practice a version of meritocratic representation that seems in its country to be perceived as relatively legitimate.

It is just conceivable that such a system could be combined with the rule of law, not only in the civil code, as is currently more or less the case in China, but also in the criminal code, where it is currently largely absent.⁷³ It could conceivably be combined with effective human rights. It could conceivably be combined with effective forms of communication, even recursive communication, between the represented and the representatives.⁷⁴ It could relatively easily be combined with certain forms of individual dignity, such as the dignity of work, the dignity that derives from food security, and possibly even the dignity of being treated by street-level bureaucrats with respect.⁷⁵ It does not, however, seem compatible with the dignity that we associate with democratic citizenship: the particular dignity of standing tall or looking directly in the others’ eyes that derives from equal political liberty, the equality of self-government.⁷⁶

Electoral, administrative, and societal representative systems in both democracy and meritocratic demobenia can all use recursive communication with constituents to generate better outcomes and greater legitimacy, both perceived and normative. Democracy is unique in giving power to citizens behind that recursive communication and having a legitimating aspirational norm that all

⁷² In recent work with James Fishkin (2017) I have also called this system “meritocratic autocracy,” but I prefer “meritocratic demobenia.”

⁷³ Hurst and Kinkel 2011.

⁷⁴ See, e.g., He and Warren, 2011.

⁷⁵ During the Cultural Revolution, Chinese street-level bureaucrats adopted the phrase “I’m sorry to have made you passive” to apologize for taking away the initiative from the persons served rather than soliciting their suggestions. A citizen might correspondingly complain to a bureaucrat, “I feel very passive” (Fincher 1972, p. 334).

⁷⁶ See Waldron 2002 on “moral orthopedics” and Pettit 2014 on the “eyeball test.”

citizens have equal power. As we try to make sense intellectually of the complicated implicit norms that have arisen slowly in existing democracies in the practice of electoral, administrative, and societal representation, we might look particularly for democratic features that reinforce republican dignity, both through appropriate guarantees of power in the larger system and through the specific mechanisms of recursive communication in the representative relationship.

Appendix A: Notes on Administrative Representation

In the United States, many administrative offices must submit proposed rules to some version of “Notice and comment,” a legally required procedure that allows the public to comment, today usually through the internet. In some agencies, “Public comments often make a large difference in the content of what emerges from the national government, whether the issue involves climate change, health reform, occupational safety, or homeland security. Time and again, proposed rules are changed as a result of what government learns.”⁷⁷ Major stakeholder associations can have significant effects through this process, especially when they have continuing connections with the relevant agency. They may expect some recursivity in their consultations. When individual citizens use these procedures, administrators pay far less attention and the process is rarely recursive.

The US federal government has also developed other systems of public participation with the goal of making administrative policy decisions qualitatively better and more normatively legitimate.⁷⁸ In the extreme, administrators essentially delegate the law-making decision to stakeholder groups. In “negotiated rule-making,” for example, if “representatives from regulated firms, trade associations, groups, and other affected organizations, as well the agency staff” reach consensus, the agency will adopt that rule and then proceed to Notice and Comment.⁷⁹ The hope is that rules so negotiated and “co-produced” will meet the main objectives of all parties, be subject to fewer judicial challenges, and be more enthusiastically implemented by those required to comply.⁸⁰ These procedures often incorporate considerable recursivity.

In Northern Europe, neo-corporatist policy-making delegates issues of wages and hours primarily to associations of labor and manufacturing, which negotiate a policy that the legislature usually adopts without change. In parallel but more advanced developments, EU administrative policy-making on many issues deploys committees with regulatory authority composed of descriptive representatives from differently affected countries, consulting stakeholders and negotiating among themselves with relative freedom to advance the broader ends of their delegated mandate “as they see fit,” so long as they “report regularly on their performance and participate in a peer review in which their results are compared with those pursuing other means to the same general ends.”⁸¹ Although sometimes described as “policy coordination,”⁸² this is

⁷⁷ Sunstein 2016, p. 9.

⁷⁸ Coglianese et al. 2009.

⁷⁹ Coglianese 1997, pp. 1256-7.

⁸⁰ See Coglianese 2010 for the controversy over the effectiveness of negotiated rule-making.

⁸¹ Sabel and Zeitlin 2010.

also a form of lawmaking. It is often highly recursive, with committees and stakeholders developing long-term relationships.

Charles Sabel and Jonathan Zeitlin applaud the way these EU decentralized negotiations, in a process of recursive deliberation, mutual communication, and negotiation, begin with a broad mandate from elected representatives, evolve into discussions among experts from the different countries, bring in organized “stakeholders,” compare solutions to problems from different venues, and then loop back to the elected representatives, all the while experimenting with possible solutions and reporting the results of these experiments to their peers. In this process, Sabel and Zeitlin write, “solutions can only be identified as they are pursued.” The administrators, who are also experts, communicators, and negotiators, “have to learn what problem they are solving, and what solution they are seeking, through the very process of problem solving.” Accountability is “dynamic” rather than hierarchical, because the more recursive the communication and decision processes, the more “the very distinction between principal and agent is confounded.”⁸³ The members of EU committees are informally accountable to one another, the committees themselves are formally accountable to other parallel committees in the system, and the larger process is formally accountable to administrators higher in the system and ultimately to the elected representatives, who are looped in at appropriate moments. Sabel and Zeitlin have concluded that this process tends to generate intelligent and mutually acceptable results. It has, however, three democratic weaknesses: the affected public is represented primarily by stakeholder groups that are not fully representative, affected citizens have little direct communicative access to the process, and the elected representatives rarely have the time or expertise to play their recursive role adequately.

Both at the policy and the street levels, in addition to being lawmakers administrators also represent in their actions the public’s will as filtered through the electoral and legislative processes. At their best, they represent the collective face of the public back to the public. Thus at the street level, it is as true of the customs inspector as it is of the police that “the police are the public and the public are the police.”⁸⁴ In representing the coercing collective public to the individual members of the public who at that moment are being coerced, the street-level bureaucrat has considerable responsibility for both the normative and the perceived legitimacy of the laws. With attention and in some situations, some recursivity can be built into the interactions of street level bureaucrats and those they represent.⁸⁵

⁸² Lord forthcoming.

⁸³ Sabel and Zeitlin 2010.

⁸⁴ The “Seventh Principle of Policing,” attributed to Robert Peel, states that “Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police.” (Note: Lentz and Chaires 2007 do not find these principles in Peel’s writing; they were probably developed after he died and attributed to him.)

⁸⁵ E.g., the police beat meetings in Fung 2004.

i. *Restructure*

When states experience a crisis in electoral representation, they often experience at the same time a crisis in administrative representation. Citizens' experiences of "interfering government" that undermine the legitimacy of necessary state coercion derive as much from administrators' higher level policy decisions and street-level bureaucrats' actions while implementing state coercion as they do from the broad policies voted into law by elected representatives.

Restructuring the representative system to improve communication between representatives and citizens thus means restructuring administrative representation -- to include more descriptive representation, to give citizens more power to initiate communication from below, and to provide incentives for recursive communication by the administrators as representatives at both the policy-making and "street" levels.

Given appropriate and non-corrupt delegation from the legislative branch, meritocracy in appointment, designed to avoid both the actuality and appearance of favoritism, is one strong foundation to both normative and perceived administrative legitimacy at both the policy-making and the street level. Meritocratic entrance and advancement does not, however, require exam-taking, especially because this format disadvantages some who could otherwise perform well and provide descriptive representation. Although the use of exams for selection is now the easiest way to establish non-favoritism, the importance of legitimacy in administrative representation makes it necessary to experiment with other forms in order to select, among other things, administrative representatives with the skills and desire for recursive communication with the constituencies they represent and the individuals or groups who are subject to their coercion.⁸⁶

A route that I believe can take us only a little way toward greater legitimacy is the demand for greater citizen control over administration through the processes of electoral representation. As many have pointed out, the administrative arm has the capacity to develop far greater expertise on most issues than almost any citizen or elected representative. It is not easy to articulate that expertise with greater citizen control. Rather imposing greater direct control over administrative decisions through either referenda or the legislature or even improving the public's capacity to monitor and sanction administrators,⁸⁷ restructuring for greater legitimacy might instead, as suggested here, take the form of improving the quality and quantity of communication between citizens and their administrative representatives, creating ways that citizens can connect meaningfully and even recursively to the policy level other than through often self-appointed and unequally accessible stakeholder groups. Citizen power is not absent from this picture, but as in electoral representation, a recalibration would add more communication to the balance.

⁸⁶ For this tension, see Peters, Maravic and Schöter, 2015, pp. 9-10.

⁸⁷ Increased external monitoring and control of administrators has costs not only in the apparatus of control but also in the morale, creativity, and commitment to the task of the administrator (Mansbridge 2014c).

One recent attempt to improve legitimacy at the street level has taken the form of “reinventing government” by designing government services to respond to the desires of the consumers of those services through their consumer choice and consumer power.⁸⁸ Collective citizen deliberation and citizen consciousness of the need to produce free-access goods are virtually absent from these processes. Treating citizens as consumers robs the interaction of its public quality. Nevertheless, such forms of restructuring do produce some communication and mutual education, both through complaint and response at the point of service and through the blunt binary signal of “buy/don’t buy.” By shifting “purchasing power” to the citizen, such reforms can inform administrators at the policy level of citizens’ needs as the citizens perceive them. They also often produce greater street-level respect for citizens’ perceived needs and personal dignity. By changing the incentives and therefore the behavior of street-level administrators, they chip away at the reality that underlies the widespread perception of street-level administrators, and therefore the state, as arrogant, unreceptive, and resistant to information about the citizen’s actual situation. They have some blunt recursivity built into them.

Restructuring administrative representation to put the citizen at the center could, however, take more communicative forms, including even one-way communication. Suppose administrative training explicitly recognized and valued the citizen as law-giver as well as object of the law. Small practices at the street level could reinforce the message. When a police officer stopped a motorist and gave a ticket for speeding, the ideal image in both officer and motorist’s minds could be that the motorist, in his or her incarnation as law-giver, has created the law that now the motorist should obey. A one-page leaflet, given along with the ticket for speeding, could explain the reasons why the elected legislators or relevant administrators set this speed limit for this stretch of highway. That gesture could remind both the officer and the speeder that the speeder, as citizen, is ideally an equal partner in making the law that now coerces her. Ideally, the pamphlet might even provoke some recursive communication. When the law has no rationale that the citizen might approve or even recognize that a majority of his or her fellow citizens would approve, the inability of an administration to craft a document convincingly explaining the rationale for the law ought to trigger further scrutiny and citizen protest.

Increasing descriptive representation at all levels of administration could, in non-corrupt conditions, put the citizen more communicatively at the center. Since the 1940s a large literature has evolved on “representative bureaucracy,” with a variety of empirical evidence claiming broadly that in many contexts, particularly when the bureaucracy is not corrupt and its members have discretionary and therefore law-making power, a bureaucracy that descriptively mirrors the population it serves will both make better decisions and be more normatively and perceptually legitimate.⁸⁹ Thinkers in this tradition distinguish between “passive” descriptive representation,

⁸⁸ See early work in the rational choice by Ostrom 1973; later see Osborne and Gaebler 1992 and Osborne and Plastrik 1997.

⁸⁹ Kingsley 1944 provided the first theory and Kirslov 1974 an update; early reviews of the empirical and theoretical literature appear in Meier 1975 and 1993; more recently see Dolan and Rosenblum 2003, Kennedy 2014, and Peters, Maravic and Schröter 2015. Perceived legitimacy does not always correspond

in which the representative simply has the characteristics of some group in the population, and “active” representation, in which the representative actively and consciously advocates for the interests of that group. On this continuum, toward the passive end, the different experiences of representatives from different backgrounds let them bring different approaches and perspectives to a common problem, often improving the quality of the result through mutual communication among the representatives.⁹⁰ Toward the active end, administrators in agencies whose task is to advocate for a particular group usually have greater perceived legitimacy when their own background resembles that of the group for which they are advocating. The context determines which degrees of activity are both possible and normatively appropriate. Both at the policy and street level, descriptive representation is most important when the policy product (e.g., law and order, good education) must be “co-produced” by the administrators and those affected working together, largely because descriptive representation facilitates both trust and recursive communication between the administrative representatives and the citizenry.⁹¹

Although deliberative mini-publics today may serve as excellent conduits of information to administrators, current designs of such mini-publics often neglect the communicative relation between the “representatives” chosen by lot and their represented public. While electoral representation gives representatives incentives to contact their constituents and vice versa, representatives selected by lot and their constituents have no such incentives. The British Columbia Citizens Assembly process included considerable recursive communication, particularly in the public consultation phase that lasted two months and included over 50 public hearings. Yet after the Assembly voted, the formal process of recursive communication came to an end. Individual representatives took it upon themselves to give speeches, write letters to papers, and otherwise promote publicly the conclusions the Assembly had reached. But they had no formal apparatus for doing so. To the contrary, in what I believe was a misguided attempt to

with normative legitimacy. In the US, for example, in one study Blacks were more likely to perceive the actions of Black officers as legitimate, whereas Whites are more likely to perceive the actions of White officers as legitimate (Theobald and Haider-Markel 2008), yet in another increasing the number of Black police officers increased racial disparity in vehicle stops (Wilkins and Williams 2008). In one study of English local government, representative bureaucracy was negatively associated with citizens’ perceptions of local authority performance (Andrews, Boyne and Meier 2005). In contexts where administrative office provides an informal license to extort, descriptive bureaucracy simply spreads the gains more equally among ethnic groups. In Nigeria, Dauda (1990: 483) notes, many cases “vividly demonstrate the corrupt nature of representative bureaucracy.”

⁹⁰ On active and passive representation, Selden 1997; Page 2007, Landemore 2012. Although communication among representatives is not the subject of this paper, a small example of the communicative uses of descriptive representation comes from the EU committees, where descriptive representation by nation brings much necessary cultural and factual information to the deliberative and negotiating process and avoids “countless opportunities for misunderstanding.” French members of the committee, for example, realize that “if a French administration has not answered a request within 2 months, the request is deemed to be rejected.” Without a French representative on the committee, “some administrators would be waiting for an answer, whereas others would consider that the answer had already been given and would have closed the case” (Gravier 2013).

⁹¹ Andrews, Ashworth, and Meier 2014; Riccucci, Van Ryzin, and Lavena 2014.

increase perceived legitimacy, the Citizens Assembly explicitly eschewed a publicity budget and an on-going relationship with the media. Nor do Deliberative Polls currently facilitate the communicative relationship between the representatives chosen by lot and those they represent. In a small step toward at least one-way communication, after the deliberative sessions have ended the administrators could interview on video some of the individuals who had changed their minds (identified by the post-deliberation survey), so that the media could air stories of people with whom the public might identify, explaining the reasons for their decision. Neblo suggests other institutional innovations that would help convey to the public the rationales behind the deliberated opinions and not just the numerical report of attitude changes.⁹² Because mini-publics are usually a one-shot addition to the system, they are not ideal vehicles for recursive communication.

At the street level, the administrative representative's decisions can be a matter of life and death. Descriptively, the more verbal, visual, and performance cues a street-level bureaucrat can give that she is "like" the citizen, the more likely it is that the citizen will trust her, communicate frankly with her, and experience solidarity with her in helping to produce the free-access good that the citizen needs as a member of the public. The riots in Ferguson Missouri in 2014, set off when a white police officer fatally shot an 18-year old black man, grew in fury when white state troopers, clad in full SWAT gear, used military-like force to put down the rioters. The rioting ceased only when the governor of the state asked Captain Ron Johnson, from the Missouri State Highway Patrol, a black man who had grown up near Ferguson, to take charge. In a move approved by the governor, Johnson joined the non-violent protests himself and spent days talking recursively with both violent and non-violent protesters. Such a move required that the existing Highway Patrol include enough African American officers that among them the governor could find one like Captain Johnson.⁹³

The concept of descriptive representation in the national administration will probably not meet the criteria of perceived legitimacy in political cultures such as the French, which takes a principled stance against any subgroups within the citizenry, or the German, which tends to view as corruption any deviation from the universalism of a *Rechtsstaat*. I believe it would be a mistake, however, to accept without considerable argument the idea that these stances simply define normative legitimacy. Descriptive representation is an undeniable aid to communication, particularly recursive communication, in many situations involving marginalized.

ii. *Supplement:*

At the policy level, we can add many features to current systems of administrative representation to make them more legitimate, normatively and perceptually, in their lawgiving roles as well as

⁹² Neblo 2015, 187.

⁹³ To the more general criteria for descriptive representation of including all major sides of significant conflict and social salience, we may add, for communicative purposes, the major axes of communicative misunderstanding.

in their roles as the face of the public to the public. We can, for example, increase the number and quality of the “public,” “citizen,” and “stakeholder” groups that administrators consult. We could create incentives for internal democracy within those groups and make the system of interest representative more reflective of the interests of the least advantaged (see Appendix B). We can also create institutions that give citizens power to interpellate, or ask questions of and demand answers from, administrators at various points in the regulatory process. We can find more ways, such as Freedom of Information Acts, to give citizens not full transparency into the processes of negotiation, which to be effective must remain behind closed doors, but access to the wording of the laws, the rationales for the decisions, and the most important materials on which the decisions were based. The more recursive these acts of communication become, the more normatively legitimate I would argue that they are, and the more likely to enhance perceived legitimacy.

Neo-corporatism, and by extension the EU committee system that Sabel and Zeitlin have shown to be effective mechanisms for input from selective members of the public, fails both to reach equally into the citizenry and to include the citizenry communicatively. To combat both problems, Phillippe Schmitter has suggested a reform that would give each citizen at regular intervals the capacity to cast a number of vouchers for the organizations of the citizen’s choice (restricted to non-profits with democratically selected leaders and transparent finances, etc.). These organizations would receive public funds and, most importantly, represent the interests and ideals that the citizen wanted to promote most vigorously in the years before their next choice.⁹⁴ This innovation, which some small state might introduce experimentally, would make the associative neo-corporatist institutions more inclusive, less static, and more responsive to changing citizen interests and preferences. Although Schmitter’s proposal does not include recommendations for communicative recursivity, such recommendations could easily be built into the proposal.

In the EU and nations that have an office of ombudsman, that office, although usually seen as acting only to preserve citizen rights, currently also acts as a channel of communication from constituents, informing and persuading both elected representatives and administrators. A possible innovation would make it possible for citizens organizing both in the EU and on the national level to take issues to the ombudsman as a group. Such an innovation might even build in a process of recursive interaction between the organizing citizens and the ombuds officers. A parallel innovation would facilitate group petitions through the existing right to petition in the EU and on the national level. Laws requiring open information often trigger citizen organization and communication with administrators; these processes could be restructured to encourage recursive deliberation on the issues.

The existing mechanism of citizen initiatives could be also put to the new use of triggering mandatory public hearings. In such hearings the elected representatives or appointed bureaucrats responsible for an unpopular policy would be required to face questions and objections from the

⁹⁴ Schmitter 1992; see also, e.g., Hirst 1994.

public and to explain their reasons for these policies. Although the resulting recursivity would in most case fall far short of deliberative standards, but it could serve as a start.

Citizen initiatives could also trigger citizens' assemblies, or mini-publics of representatives drawn by lot from the citizenry. If sufficient numbers of citizens did not like a ruling from a local administration or from Brussels, they could collect signatures and demand not only public hearings but also a representative citizen assembly on the topic. Although a well-designed citizens' assembly is expensive and non-recursive after it has ended, it has the advantage of being relatively egalitarian and, if well publicized, consciousness-raising. The very process of demanding, forming, and attending to the deliberations in the citizens' assembly would give citizens in general greater incentives to learn more about the issues and elected representatives incentives to pay attention to and engage recursively with the public.

Perceived legitimacy suffers, however, and normative legitimacy may not increase when such assemblies are seen not as consultative mechanisms but as vehicles for citizen empowerment. In most of the literature on citizen participation it is taken for granted that the more empowered a participatory institution is, the more democratically legitimate it is, from the perspective both of the participating citizens and the representative system as a whole.⁹⁵ All else equal, the more directly a citizen subject to coercion applies that coercion to herself, the more democratically legitimate it is. The fewer the steps in the process away from citizens binding themselves through a direct vote, the better. "Pseudo-participation," where administrators who have already decided on the outcome hold manipulative consultations to make the participants think they have been listened to, is rightly derided as completely illegitimate.⁹⁶ The iconic 1968 poster from Paris with its conjugation, "I participate, you participate..." ending, "they profit,"⁹⁷ summarizes the cynicism appropriate to such manipulations. Yet the illegitimacy of pseudo-participation does not, as its converse, assure the greater legitimacy of empowered over consultative mechanisms. All else may not be equal. In a representative system that includes electoral, administrative, and societal representation, empowering one set of representatives (the citizens or corporate representatives who attend a meeting) against another (the administrators chosen by elected legislators) in a non-recursive communication may negatively affect the overall bias in the representative system and the quality of the decision.

Many of the supplements to administrative representation suggested here have the aim of "multiplying the opportunities for the represented to become directly involved in the decision-making processes."⁹⁸ The stress in this analysis, however, is on the quality of communication

⁹⁵ E.g., Arnstein's 1969 now classic eight-step "ladder of participation," with "manipulation" at the bottom, "citizen control" at the top, and "consultation" falling just under half-way up, described as "tokenism" and a "sham" (pp. 217, 219).

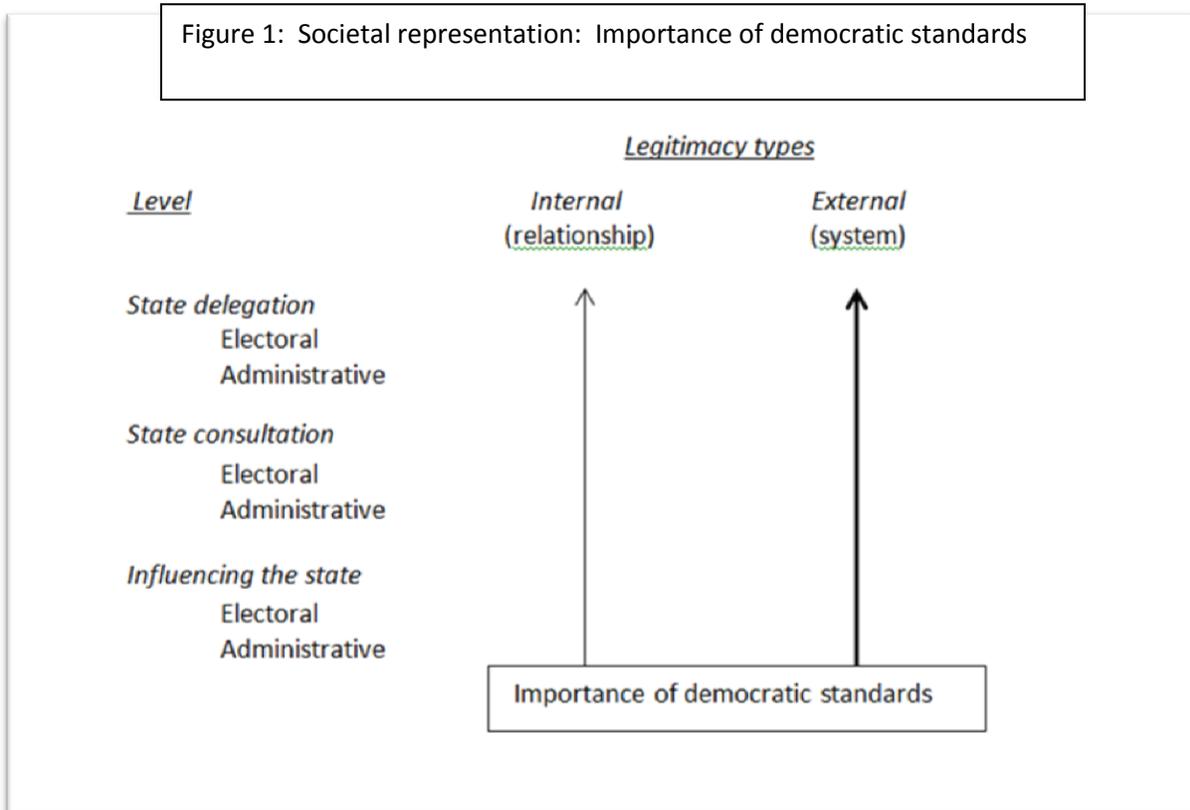
⁹⁶ On pseudo-participation see Verba 1961 and Pateman 1970.

⁹⁷ <http://gallica.bnf.fr/ark:/12148/btv1b9018449p>.

⁹⁸ Hayat forthcoming.

between represented and representative rather than on the power of the represented. The specifics of any of these suggested supplements are far less important than the overall point that administrative representatives cannot by themselves represent the public adequately any more than can elected representatives. It is up to the political ingenuity of citizens conversant with their own culture and institutional possibilities to devise ways of bringing citizen voices into the decisions of administrators in an inclusive, recursive, and considered manner.

Appendix B: Notes on Societal Representation



When governments have *explicitly delegated* the power for law-making or enforcement to societal organizations, the democratic standards – both internal and external -- might seem to be straightforward. But even at this level we have not yet worked out fully what “inclusiveness, transparency, and accountability” might imply for a private organization to which the government has delegated some powers.

Consider the social movement organizations and their community associations to which the government of Argentina has delegated many formal state responsibilities, from food programs to workfare. In their “workfare” responsibilities (providing government jobs), the community associations can decide what work should be done and who should be hired. Some associations make participation in public protests to get more state money for workfare programs, such as their own, part of the eligibility requirement for giving someone a job.⁹⁹ In what ways should

⁹⁹ Garay 2007, p. 307

these organizations be inclusive, transparent, and accountable? If we were to judge these organizations on *internal* criteria for a democratic representative relationship, whom would we count as the represented? The dues-paying formal members of the association? The unemployed hired by the association? All of the poor and/or unemployed in the geographical catchment area supported by the association? The public? If we were to judge the same organizations on *external* criteria, asking if they increased or decreased systemic biases in representation, we would probably conclude that they decreased such biases by representing the interests of groups, such as the unemployed, that are demonstrably under-represented elsewhere in the electoral, administrative, and societal representative sectors.

For these societal organizations to which the state has delegated powers, Rudder, Firschuler and Choi suggest two contingency arguments for democratic legitimacy. First, the closer the groups come to making “value choices” that affect the public, the more they should be subject to the criteria of democratic accountability, while the closer they come to purely technical decisions, the less such criteria are needed. Second, the more the members’ interests diverge from those of the public (e.g., doctors’ associations setting reimbursement rates for doctors), the more the group should be subject to the criteria of democratic accountability, including recursive communication, while the less those interests diverge, the less such criteria are needed.¹⁰⁰

On the side of not requiring internal democracy in organizations to which the state delegates powers, one might argue that some groups, such as religious groups, have principled reasons for eschewing democracy in their internal decision-making. Another is that the very efficiency of private groups often derives from not being subject to the rules that produce external public accountability. If past behavior and an analysis of incentives provide sufficient reason to trust that the future behavior of members of an organization will be relatively public-regarding, a contingency argument might suggest that normative requirements for internal democracy could be waived or weakened. Regarding the internal democracy of societal organizations, we should keep in mind the advantages of multiple forms of authorization and accountability, not tethering ourselves, because of an imagined parallel to the polity, to the whole panoply of competitive elections that experience has shown useful at the level of the nation-state. Yet in general we may say that if a societal organization accepts funding from the state to deliver services, then it is reasonable to expect it to be subject to democratic norms, including the goal of recursive communication between representatives and represented.¹⁰¹

¹⁰⁰ Rudder, Firschuler and Choi 2016, p. 56; p. 125 on doctors. These criteria would need to be expanded to distinguish between external and internal accountability.

¹⁰¹ Smith and Teasdale 2012.

For stakeholder groups that governments *consult formally*, democratic criteria regarding *external* or systemic bias seem at first relatively easy to conceive and apply. If the state, either in its electoral or administrative arm, consults organized groups in civil society, it normatively ought to consult broadly, making sure that all segments of the affected population are consulted, perhaps in proportion to number, perhaps in proportion to affectedness, perhaps in proportion to the need for policy expertise on a particular issue within the policy area, perhaps via over-representation to bring in relatively marginalized voices. In current practice, group power rather than any consideration of proportionality or need plays a major role in consultative representation. Almost any group with the power to block proposed policy will find legislators and administrators willing to give it disproportionate attention and recursive communicative opportunities. Increases in perceived legitimacy among members of the consulted group will also flow from that attention and those opportunities. Normatively, however, the democratic standard should very probably not be the power an individual or group can collect in any give political marketplace but rather proportional affectedness, corrected for justifiable exceptions. Thus we need to ask what countervailing steps a democracy working in the public interest ought to take in order to consult not only the powerful but also, in a way that can countervail that power, those who are less powerful but affected, including the general public. Not only will such practices take much experimentation; working out the question of affectedness is also not as easy as might appear at first sight.¹⁰²

Criteria regarding *internal* democracy in the representative relationship within formally consulted organizations are even more problematic, not least because these organizations, although serving as consultants to governments in one of their roles, usually have as their largest role service to their members. As in the case of groups that have formal delegated powers, the members of these organizations may not consider democratic criteria appropriate to their representative relationships. Thus in regard to both internal and external democratic criteria, a contingency approach for these consulted organizations seems appropriate. The more these organizations are empowered in the process of their consultation with governments, the more internal and external norms of democracy, including recursivity, should apply.

Finally, among societal forces that simply *influence* the state, representation can be both formal and informal. Internally, some organizations have elections and formal accountability. In many associations, mechanisms of formal authorization and accountability play a smaller role. In the most informally organized of these organizations, the mechanisms of accountability often derive primarily from the gift, exit, and voice responses of both the represented and any outside

¹⁰² See, e.g., Shapiro 1999, pp. 38-39, Goodin 2007, Fung 2013.

audience to the claimed representatives' words and actions.¹⁰³ Accountability in this realm often continues to take the form of those who claim to represent "giving an account": explaining and justifying their actions. Here as in electoral and administrative representation, the representative's account faces outward as well as inward. The representative's effectiveness to a given outside audience usually depends on members of the association not denouncing that representative's claim to represent publicly or influentially. If the represented are aware of the claim, and if they have sufficient capacities in time, energy, organizing resources and channels of communication, they can exercise both power and persuasion recursively through what Montanaro calls the continuing "reputational accountability" of the claiming representative, among both the general public and specific target audiences.

Internally to these influencing organizations, some forms of representation also occur informally and even in a sense accidentally. Those active in associational life informally represent those who are not. Even if every citizen in the polity were to be politically active, those active citizens in a particular organization would be informal representatives of the inactive in that organization. It is not clear, however, that the active have any normative obligation qua representatives, in addition to their obligations as human beings or citizens of a larger polity, to consider and take action to represent the interests of those not present.¹⁰⁴

For organizations that only influence the state, the normative democratic mandate for the *external* legitimacy of the representative system seems far clearer. Montanaro points out that many mechanisms of societal representation are "more easily wielded by those with power and resources."¹⁰⁵ The universe of organizations either representing a version of the public interest or claiming the rightful representation of their narrow interests is structured predictably to favor the dominant groups in society. Organizing is a collective free-rider problem. It would benefit all those affected by state action to have an organization to represent their interests, but it is not usually in the interest of those individuals to pay the costs of organization. Those who have more money or other resources, such as a previously-existing structure around which to organize are, as a consequence, far more likely to be represented in the societal realm. Unions, for example, are highly vulnerable to the free-rider dynamic and thus to laws making it easier or

¹⁰³ Exit and voice derive from Hirschmann 1973. What I call "gift," or voluntary contribution to the cause, is the opposite of exit. Those who make representative claims require non-exit; they may benefit in their claims from voluntary contributions to their causes or organizations, but do not require such contributions for their claims to hold.

¹⁰⁴ Mansbridge 1980 discusses informal representation in a New England town meeting and its possible obligations.

¹⁰⁵ Montanaro forthcoming. p. 8; see her section on "skewed representative outcomes" (pp. 17-18); see also Disch forthcoming.

harder to organize. Organizations representing those less easy to organize require jump-starting by the state or by foundations.¹⁰⁶ Even social movements, which are of all forms of organizing perhaps the most open to new ideas, conflict, and challenges, as well as potentially inclusive of the most marginal members of the polity, face significant barriers to organizing on a scale that can get attention. So too for organizations within social movements dedicated to defending the marginalized; even they often pay more attention to the interests of the least marginalized among them.¹⁰⁷

When considering how to restructure the entire arena of societal representation, the biggest problem thus may not be the one to which most normative attention has been given, namely the internal relationship of representation between represented and representative, but rather the external one of system bias. Here the normative imperative is relatively clear: to create sufficient balance in the system so that at least within democratic polities the equally affected have equal power in the system and a genuinely equal opportunity to influence the relevant deliberations over outcomes. A radical restructuring of the society at large would be required to meet these ends.

In all three realms of delegated, consultative, and influencing organizations, we may expect in most advanced democracies extreme biases in the representative system and problems in the internal democracy of the relevant organizations. Short of a radical restructuring of society, we should at least consider supplements to the universe of voluntary association to favor the currently disadvantaged. Small steps might include Schmitter's (1992) system of citizen-voted vouchers to support organizations that will then be formally consulted by the state and have requirements for internal democracy. In contexts of the greatest bias in the existing associational universe and when the expense of doing the practice well can be met, state governments and private foundations might consider introducing deliberative mini-publics of citizens chosen by random selection to overcome the usual barriers to participation for the marginalized. Although this mechanism is being developed globally, it has not yet been tried on contentious and important subjects in which the randomly selected assembly was empowered to take a binding vote. Because at the moment the random selection mechanism has unclear perceived legitimacy, it is best used, at most, for formal consultation.¹⁰⁸

¹⁰⁶ On foundation support helping to solve the free-rider organizing problem for the less easily organized, see Walker 1983.

¹⁰⁷ Strolovitch 2007.

¹⁰⁸ Future generations, which cannot represent themselves, provide a guide to the general obligations of the more advantaged toward those less advantaged in both power and access to the means of persuasion;

In short, the more fully imbricated with the state societal organizations become, the more the general public have a stake both in the bias within the societal representative system and in the organizations' internal representative relationships. Externally, self-organization in societal representation will generate massive inequalities. Public intervention, through state action and, less reliably, public-interested private action (e.g., through private foundations) is required to institute greater equality. Internally, authorization and accountability need not follow the competitive electoral lines of the nation-state model, but the public should have good reason to believe that authorization by and accountability to the represented are taking place, ideally with recursive communication built in.

suggestions for restructuring and supplementing the larger representative system to better represent the currently marginalized may also work for future generations (Whiteside forthcoming).

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