



This is a repository copy of *Indirect elections as a constitutional device of epistocracy*.

White Rose Research Online URL for this paper:

<https://eprints.whiterose.ac.uk/178337/>

Version: Accepted Version

Article:

Bhatia, U. orcid.org/0000-0002-8094-5906 (2022) Indirect elections as a constitutional device of epistocracy. *International Journal of Constitutional Law*, 20 (1). pp. 82-111. ISSN 1474-2640

<https://doi.org/10.1093/icon/moac001>

This is a pre-copyedited, author-produced version of an article accepted for publication in *International Journal of Constitutional Law* following peer review. The version of record, Udit Bhatia, Indirect elections as a constitutional device of epistocracy, *International Journal of Constitutional Law*, 2022, moac001 is available online at: <https://doi.org/10.1093/icon/moac001>

Reuse

Items deposited in White Rose Research Online are protected by copyright, with all rights reserved unless indicated otherwise. They may be downloaded and/or printed for private study, or other acts as permitted by national copyright laws. The publisher or other rights holders may allow further reproduction and re-use of the full text version. This is indicated by the licence information on the White Rose Research Online record for the item.

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.



eprints@whiterose.ac.uk
<https://eprints.whiterose.ac.uk/>

Indirect Elections as a Constitutional Device of Epistocracy

1. Introduction

In recent times, many have questioned the enthusiasm attached to democratic institutions and their underlying principle of inclusiveness. Democracy is no longer a clear winner among alternatives, such critics suggest. Rather, the crisis of democratic politics around the world indicates the need for radically rethinking how our basic political institutions should be designed. One direction in which such interrogation pulls is the exploration of ‘epistocracy’, or rule by competent, as an alternative to our allegedly unthinking commitment to democracy.¹ The immediate question that follows, however, is the institutional form that an epistocratic system should take. This article explores the use of indirect elections for the legislature as an epistocratic constitutional device in historical and critical perspective. These are elections where legislators are not selected directly by voters, but by intermediary electors chosen by voters. I draw upon the United States and India as case studies illustrative of reliance on indirect election as an epistocratic constitutional device across time and geographical boundaries. Next, I discuss why indirect elections might serve an epistocratic function before proceeding to explore critiques historically levelled against their use in both countries. As I demonstrate, critics in these countries raised serious questions about the epistocratic case for indirect election. At the same time, their concerns raised a further dilemma, simultaneously leaving representative government itself—direct as well as indirect—open to challenge.

This article, therefore, has two related objectives. First, it aims to offer a historically sensitive perspective on epistocracy. So far, commentary on epistocracy has either neglected its previous constitutional manifestations or highlighted a limited range of institutional forms it has taken in the past. This includes, for instance, mechanisms like suffrage-based restrictions or plural votes for certain groups of citizens.² Indirect elections rarely enter into this story. I hope to show that, historically, indirect elections were defended by some constitution-makers as a way of bypassing popular decision-making in order to enhance the competence of the legislature.³ Moreover, this article seeks to nuance discussions on the use of indirect elections by unpacking its

¹ Jason Brennan, *Against Democracy* (Princeton: Princeton University Press, 2016). The defence of epistocracy has also appeared in popular forums like LZ Granderson, “Don’t Let Ignorant People Vote”, *CNN Opinion*, April 12, 2011; David Harsanyi, “We Must Weed Out Ignorant Americans from the Electorate”, *Washington Post*, 20 May 2016.

² See, for instance, Bryan Caplan, *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton: Princeton University Press, 2006), 197-8 on competence tests for voters or plural votes for the educated.

³ I should also add that the scope of this paper is limited to indirect elections for the legislature, even though such elections might be applied to other institutions as well. This is partly due to constraints of space, although much of the analysis in this article is applicable to indirect elections, more generally.

epistemic assumptions, demonstrating why, given historical concerns about citizens' incapacities and the need for an enlightened elite, indirect elections might serve an epistocratic purpose.

Second, this article also examines criticisms historically levelled against the epistocratic case for indirect election in America and India. This task is particularly critical in informing contemporary debates over this mode of election, not in the least because it persists in several countries, including India.⁴ As I demonstrate, commentators in both jurisdictions offer significant criticisms that problematised the epistocratic role indirect elections were traditionally intended to play. These critiques concerned, first, the impossibility of ensuring that indirect elections worked as intended. Voters would, and indeed had begun to, base their choice of state legislators on their judgments about the suitability of senatorial candidates. As such, indirect elections operated on a de facto direct basis, with worrying implications for state-level legislative politics. The second line of attack in India and America emphasised how assumptions about the filtration of choice from state legislators to their choice of senators were vitiated by the rise of organised parties. By interceding in this choice, parties precluded the kind of independent judgment state legislators were required to exercise in the choice of suitable senators. Yet, any argument for the mere substitution of indirect with direct election faces problems common to those facing the former. Commentators on second chamber design in America and India were cognizant of this, seeking alternatives to both, direct and indirect representative democracy. A closer look at historical debates over indirect election, therefore, underscores challenges facing the case for representative democracy itself. I return to the theoretical implications of this analysis in the conclusion.

In studying the American and Indian cases together, I do not intend to suggest perfect equivalence between the two with respect to second chamber design. The Senate in America was fashioned as, and remains, a much more powerful body than the *Rajya Sabha*, the indirectly elected upper chamber in India. Legislation in America requires the consent of the US Senate; whereas, in India, disapproval of a bill by the Rajya Sabha results in a joint session of both chambers, where the *Lok Sabha*—the directly elected lower chamber—holds the upper hand by virtue of its greater numerical size (543 members compared to 250 in the Rajya Sabha).⁵ Further, the Senate holds additional powers with respect to the approval of executive appointments, treaties, and judicial nominees that are unavailable to the Rajya Sabha. Thus, as an

⁴ Their revival has been advanced in the United States, too. Proponents of this position include Justice Antonin Scalia, Judge Jay Bybee, Senators Mike Lee, Ted Cruz and Jeff Flake, and Governors Mike Huckabee and Rick Perry.

⁵ There are exceptions to this: in the case of money bills, the consent of the Rajya Sabha is not necessary; in the case of amendments to the constitution, the consent of both chambers is necessary.

epistocratic device, indirect election may be incorporated in a range of ways: as a medium of strong epistocracy where indirectly elected legislators hold greater power, or as a tool for weak epistocracy where they are subordinate to popularly elected legislators. Indeed, as I later demonstrate, the differences in the bicameral framework and the relative powers allocated to each chamber mean that arguments mounted against indirect election in one system do not apply as neatly to the other.

Further, for the most part, my analysis sets aside debates over federalism in which discussions over indirect election in the United States and India were embedded. This is partly for reasons of space, allowing us to zoom in on the epistemic dimension of this mode of election, but also because arguments about federalism seem to leave the mode of election underdetermined.⁶ Insofar as federalism leans in favour of indirect election, it arguably relies on the assumption that legislators so chosen would be *better*, in some sense, at representing their respective states. That is, it would appeal to the notion that senators elected by the state legislatures would be better suited for the protection of their states' interests. Our analysis of the epistemic dimension of indirect elections aims to explain what might capture this faith in the idea of 'better' representatives that such elections supposedly entail. Ultimately, a more comprehensive account of the relationship between indirect elections and federalism would, no doubt, require a more detailed analysis than is possible here.⁷ Nevertheless, I also briefly examine the potentially detrimental impact of indirect elections for federalism that Progressive Era commentators highlighted. In particular, I underscore concerns raised in this period about the impact of indirect elections for state legislative politics. Moreover, even if the case for indirect election leaned on concerns about federalism, it would also have to confront the challenges posed by organised party pressures on a federal legislature that I outline later in this article.

2. Indirect Elections as an Epistocratic Device in the United States

When the founding figures of America's constitution met in Philadelphia, they considered four possible ways of composing the Senate: first, through election

⁶ David Armitage notes that federalism could be 'the answer to many different questions'. One might fruitfully see the design of the Senate, therefore, as a combined response to discussions about the role of an enlightened elite in republican government and a federal chamber tasked with the protection of states' interests. David Armitage, 'We Have Always Been Federal,' in Robert Schütze and Stephen Tierney, eds., *The United Kingdom and the Federal Idea* (Oxford, 2018), 282. It is also worth noting that, historically, the emphasis on federalism in pre-independence India was compatible with radical *direct* democracy, operating in a decentralised fashion. See Tejas Parasher, 'Federalism, Representation, and Direct Democracy in 1920s India,' *Modern Intellectual History* (forthcoming). That said, there may be ways of defending indirect elections for a legislative chamber that appeal distinctively to their contribution to strengthening the polity's federal structure. To that extent, the scope of this paper is limited, addressing a dominant, epistemic argument for this mode of election, rather than offering an all things considered account.

⁷ I thank an anonymous reviewer for encouraging me to acknowledge this point.

by members of the House of Representatives; second, through election by the national executive; third, through direct election by the people; and fourth, through indirect election by the state legislatures. Of these, the first was criticized on the grounds that it would not adequately secure the benefits of bicameralism. The Senate, composed in this manner, would be unable to offer a genuine second opinion on the decisions of the House of Representatives.⁸ The second alternative was rejected on the grounds that it would blur the boundaries between the legislative and executive wings rather than securing a separation of powers between the two.⁹ This left the founders with two options: direct election of senators by the voters, or indirect election for the Senate by the state legislatures.

To understand why the latter proposal was adopted, it is helpful to situate the founding figures' choice in the context of understandings of republican government in their time. The normative idea of a 'republic' was, of course, a contested one.¹⁰ However, the claim that the Senate should house a distinct class—characterised by superior property, wisdom or virtue—received support from different notions of republicanism prevalent during the founding. The first of these was the idea of a balanced constitution as a prerequisite for a successful republic. Starting from the seventeenth-century, English constitutional commentators had come to see the King, House of Lords, and House of Commons in terms of the classical theory of balanced government. According to this theory, the three forms of government—monarchy, aristocracy, and democracy—were, left to themselves, unstable and vulnerable to degradation into their respective perverse forms (despotism, oligarchy, and anarchy). Balanced government prevented this deterioration by bringing together the best features of each form and ensuring they could act as checks on one another.

The sociological assumptions of the theory of balanced government, as it concerned America, were not without their critics. At the Philadelphia Convention, James Wilson would remind his fellow delegates that 'The British Government cannot be our model'. America did not, like Britain, have an aristocratic class that could lend itself as a natural candidate for a chamber analogous to the House of Lords. 'We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people are opposed to it', Wilson contended.¹¹ Similarly, Charles Pinkney urged that the idea of a balanced government was misplaced in America because of the social and economic equality that characterised its

⁸ *The Records of the Federal Convention of 1787* (hereafter, RFC), ed. Max Farrand (New Haven: Yale University Press, 1911), Vol. 1: 52 (James Wilson).

⁹ *Ibid.*, 58 (Roger Sherman). Also see George Mason, *ibid.*

¹⁰ See Paul Peterson, "The Meaning of Republicanism in the Federalist", *Publius* Vol. 9, No. 2 (1979): 43-75.

¹¹ RFC 1: 153; Also see James Madison, "Notes on Government" in *The Mind of James Madison*, ed. Colleen Shaheen (Cambridge: Cambridge University Press), 129.

society. Britain contained ‘three orders of people distinct in their situation, their possessions & their principles’: the people, peers, and the royalty. America, by contrast, contained ‘but one order that can be assimilated to the British Nation’, namely the commons. This order comprised the ‘great & equal body of citizens composing the inhabitants of this Country among whom there are no distinctions of rank, and very few or none of fortune’.¹²

For others, though, the English constitutional ideal of balancing competing social orders was worth emulating. Support for a balance of power through a bicameral legislature continued to find its proponents among several American founders, who ‘tended to conceive of society and politics in the classical categories of the few and the many’.¹³ Disparate economic interests, they argued, were inevitable in a society characterised by the kind of commerce prevalent in America. At the Philadelphia convention, Hamilton advanced this point most clearly in his support for a bicameral Congress:

In every community where industry is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & Creditors &c. Give all power to the many, they will oppress the few. Give all power to the few they will oppress the many. Both therefore ought to have power, that each may defend itself agst. the other.¹⁴

Gouverneur Morris argued, in a similar vein, that ‘the influence of the rich must be guarded’.¹⁵ The natural aristocracy needed to be housed in the second chamber so that it might act as a check against the democratic excesses of the popular branch. A Senate so comprised would have a ‘personal interest in checking the other branch’. It would be challenged, though, if it were to try and abuse its authority, by the popularly selected House. ‘One interest must be opposed to another interest’, Morris argued.¹⁶ A directly elected Senate would, by contrast, merely replicate the interests represented in the popular House. As such, indirect election was defended as a way of facilitating the representation of the wealthy in the pursuit of balanced government.

Many commentators have emphasised the centrality that America’s constitution-makers attached to the protection of property rights. Ilya Somin suggests, ‘If there was one issue on which most of the American Founders agreed, it was the importance of protecting private property rights.’¹⁷ The

¹² *RFC* 1: 403. This view had previously prevailed in Pennsylvania, the state that had constituted an exception in its rejection of a bicameral assembly and the principle of balancing powers. For an overview of the influence of the principle on state constitutions of the founding era, see Gordon Wood, *Creation of the American Republic, The Creation of the American Republic, 1776-1787* (Chapel Hill and London: University of North Carolina, 1969), Chap. 6.

¹³ Luke Mayville, ‘Fear of the Few: John Adams and the Power Elite’, *Polity* 47, no. 1 (2015): 8.

¹⁴ *RFC* 1: 288.

¹⁵ *RFC* 1: 518

¹⁶ *Ibid.*, 512.

¹⁷ Ilya Somin, *The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain* (Chicago: University of Chicago Press, 2015), 36.

acquisition and use of one's property was conceptualised as a natural right, that existed prior to, and independently of, the constitutional regime and its protection was among the 'primary objects of civil society'. Further, control over one's property was viewed as an indispensable aspect of freedom.¹⁸ Conceptualising the second chamber as a chamber of 'property' had the advantage of enabling the wealthy to safeguard their interests by counteracting attempts by the popular chamber to redistribute wealth. The protection of property, though, was not merely a matter of *class* interest. Rather, it constituted a principle of justice, and the question was how this danger was to be 'guarded agst on republican principles'. For Madison, protection of property required a legislative chamber 'sufficiently respectable for its *wisdom & virtue*, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale' (emphasis mine).¹⁹ In other words, the Senate was indeed a barrier against the violation of property rights due to democratic excesses by the popular branch. The Senate would act in this way, however, not out of mere self-interest of its propertied members, but because of their character traits: wisdom and virtue.

This brings us to the second notion of republicanism in which debates over legislative design in America were embedded. This notion, briefly alluded to in Madison's comment, had its antecedents in the republican tradition advanced by authors like James Harrington and David Hume, who advocated a bicameral legislature with an upper chamber comprising the polity's enlightened elite. In Harrington's survey of history, republics had failed when they failed to erect barriers against the impulsive tendencies of the masses. Athens, for instance, 'was cast headlong by the rashness of her demagogues or grandees into ruin' because 'her senate consisted not of the natural aristocracy, which in a commonwealth is the only spur and rein of the people'.²⁰ As such, he envisaged a bicameral legislative scheme, where the Senate, comprising the 'natural aristocracy' would debate and the Prerogative Tribe, the lower chamber would vote. The two chambers were to be chosen through a complex system of indirect election, with the Senate acting as the chamber of the elite class (the 'Horse' class), defined in terms of a property qualification.²¹ For Harrington, this qualification was important since the wisdom and learning presumed by a class of natural aristocrats required leisure that was only available to the wealthy. Thus, this class was distinguished from ordinary citizens who 'are so

¹⁸ John Adams, *The Works of John Adams*, ed. Charles Francis Adams (Boston: Little, Brown and Co., 1856) [1790], Vol. 6: 280.

¹⁹ *RFC* 1, 423.

²⁰ James Harrington, "The Commonwealth of Oceana," in *Harrington: The Commonwealth of Oceana and A System of Politics*, JGA Pocock ed. (Cambridge: Cambridge University Press), 142; 38. Also see Gary Remer, "James Harrington's New Deliberative Rhetoric: Reflection Of An Anticlassical Republicanism," *History of Political Thought* 16, no. 4 (1995): 537-38.

²¹ For an excellent summary of his proposal, see Charles Blitzer, *An Immortal Commonwealth: The Political Thought of James Harrington* (Newhaven CT: Yale University Press, 1960), Ch. 5.

busied in their private concerns that they have neither leisure to study the public, nor are safely to be trusted with it'.²²

The Harringtonian argument would later find support in the work of David Hume, who would argue that 'All free governments must consist of two councils, a lesser and greater; or, in other words, of a senate and a people'. Hume's proposed constitutional scheme comprised an indirectly elected chamber alongside a directly elected lower chamber. Without such a Senate, the people would 'want wisdom', Hume argued, defending indirect election on the grounds that 'the lower sort of people...are good judges enough of one not very distant from them in rank'. They will 'probably chuse the best, or nearly the best representative', he continues, but 'are wholly unfit' for electing into the higher offices of the republic.²³ Thus, according to him, this mode of election took cognizance of gradations in ability between persons, allowing ordinary voters—the 'lower sort'—to elect wiser electors than themselves who were nevertheless unsuited to be a part of the Senate. Such electors, in turn, would possess sufficient judgment to choose those who possessed the kind of wisdom the Senate required.

The republican notion of a natural aristocracy—those 'most distinguished by their abilities and virtue'—housed in the Senate, had its share of advocates at America's founding moment.²⁴ Thomas Jefferson, for instance, would go on to elaborate on this view, distinguishing between a natural aristocracy and its artificial counterpart. The grounds for the former consisted in 'virtue and talents', he argued. On the other hand, an artificial aristocracy was 'founded on wealth and birth'. Whereas an artificial aristocracy was a 'mischievous ingredient in government', a natural aristocracy was 'the most precious gift of nature for the instruction, the trusts, and government of a society'.²⁵ It was this latter class of persons that the Senate was intended to house. In the first instance, the enlightened elite who made up the Senate would possess the wisdom required to discern the means by which the public interest could be best promoted—an aspect of government on which the people were prone to error. Through their greater understanding of the 'laws, the affairs, and the comprehensive affairs of their country', this class of statesmen would rule wisely, bringing their knowledge to bear on their constitutional functions.²⁶ Apart from their wisdom, it was their superior virtue that entitled natural aristocrats to their place in the Senate. They would bring to bear on legislation the virtue of disinterestedness, acting impartially in service of the common good rather than the partial interests of any class. Their honesty, integrity, and

²² Harrington, *Commonwealth of Oceana*, 138

²³ David Hume, "Idea of a Perfect Commonwealth" in *Essay: Moral, Political and Literary*, ed. Eugene Miller (Indianapolis: Liberty), 522-23.

²⁴ John Jay, "The Federalist 64", in *The Federalist Papers*, ed. Lawrence Goldman (Oxford: Oxford University Press, 2008), 316. Also see *RFC* 1: 406 [Elseworth]; 431 [Madison];

²⁵ Jefferson to Adams [28 October 1813], *The Adams-Jefferson Letters*, ed. Lester J. Cappon (London: University of North Carolina Press, 1959), 388.

²⁶ James Madison, "The Federalist 62", in *The Federalist Papers*, 306.

desire to win the ‘esteem of the discerning’, distinguished them from those prone to misleading the people with their falsehoods.²⁷ Moreover, their moderation and ‘firmness’ would allow them to act as a fence against the turbulent tendencies of the masses.

The two ideas of the role of the aristocratic elite in republican government outlined above—the ideal of mixed government on the one hand, and (partial) rule by the wise on the other—differed in the way they approached the function of a bicameral legislature. For proponents of the former, a lower chamber was important to resist the self-seeking tendencies of the class that occupied the upper chamber.²⁸ Just as the Senate was a necessary check for protecting property, the House was an essential barrier against oligarchical rule by the wealthy. The republican ideal of a second chamber comprising the enlightened elite, on the other hand, conceptualised the House-Senate relationship by highlighting the *different kinds of perspectives* that members of both chambers would bring to the legislative process.²⁹ An indirectly elected Senate, while valuable for its superior wisdom and virtue, broke the intimate link between legislators and the people, potentially risking a lack of insight among the former about the very people they were to govern. There was a danger that, for all the benefits indirect election entailed, this mechanism ‘might be pushed too far’. As such, the ‘popular election of one branch of the national legislature’ was ‘essential to every plan of free government’, for otherwise ‘the people would be lost sight of altogether, and the necessary sympathy between them and their rulers and officers too little felt’. The House, therefore, was privileged as the chamber where bills for taxation must originate, because as a body drawn immediately from the people, it was ‘supposed to be the best acquainted with their interest and ability’.³⁰ While the House would represent the ‘sensibility’ of the populace, the Senate would manifest ‘knowledge and firmness’, with the two chambers offering the ‘happiest possible mode of conciliating these objects’.³¹

When it came to identifying the aristocratic elite, however, the two approaches to republicanism often overlapped in practice. The ‘goods of fortune’, after all, were closely associated with the ‘goods of the mind’.³² Wealth often acted as a proxy of sorts for the kind of wisdom senators were expected to possess. It travelled together with leisure, which, in turn, would enable education, which

²⁷ Alexander Hamilton, ‘To George Washington from Alexander Hamilton, 11 November 1794.’ In *The Papers of George Washington*, ed. David R. Hoth and Carol S. Ebel (Charlottesville: University of Virginia Press, 2013), 157–158.

²⁸ See for eg. Luke Mayville, *John Adams and the Fear of American Oligarchy* (Princeton: Princeton University Press, 2016).

²⁹ This distinction, too, though was frequently blurred in republican writing. Hume, for instance, viewed the Senate as the repository of ‘wisdom’ and the lower chamber as the guardian of ‘honesty’.

³⁰ James Madison, *RFC* 1: 50 Also see James Iredell, *Debate in State Conventions* 4, 39.

³¹ Alexander Hamilton, *Debate in State Convention* 2, 316.

³² Mayville, *Fear of the Few*, 16.

the labouring classes would find harder to attain. Their superior training would furnish an enlightened class of rulers with the knowledge necessary for discerning how the interests of the public were best pursued. Theophilus Parsons, a prominent lawyer, summed up this idea when he insisted that 'wisdom, learning, and a firmness and consistency of character' would be possessed by 'gentlemen of education, fortune and leisure'.³³ Apart from wisdom, property was also associated with virtue required of legislators. It afforded 'independence and impartiality to the human mind'³⁴, enabling them to rise above sectional interests, and act as guardians of the common good. The sense of respectability and honour that the wealthy statesmen held dear, moreover, would contribute to their acting as elder statesmen concerned with the good of the republic, eschewing the demagogic tendencies of designing men.³⁵

Yet, the nexus between virtue and property-ownership was not uncontested. Even when there existed convergence on the notion that the Senate would comprise the natural aristocracy, there was little agreement on what this term implied. Those involved in the making of America's Constitution were conscious of the difficulty involved in separating the natural aristocracy from the 'pseudocracy', or the good aristocracy from the bad 'oligarchs'. John Adams, in a letter to Jefferson, would go on to write: 'Who are these 'aristoi'? Who shall judge? Who shall select these choice Spirits from the rest of the Congregation?'³⁶ Aristocrotis, an anonymous critic from Pennsylvania, preferred satire to underscore this point:

If any person is so stupidly dull as to not discern who these few are, I would refer such to nature herself for information. Let them observe her ways and be wise. Let them mark those men whom she has endued with the necessary qualifications of authority; the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the majestic mien.³⁷

In this context, it is worth remembering that the American constitution did not prescribe any property qualifications for legislators. This is significant because, if ownership of property were truly the non-negotiable criterion for membership of the Senate, then it would make sense to entrench it as a formal

³³ Theophilus Parsons, 'The Essex Result (1778),' in *American Political Writing during the Founding Era 1760-1805*, eds. Charles Hyneman and Donald Lutz (Indianapolis: Liberty Press, 1983) Vol. 1: 491. Also see James Madison, *DSC* 5: 583 on the 'superior information incident to its (property's) holders'.

³⁴ Property, moreover, afforded 'independence and impartiality to the human mind' [Hooper to NC Congress, cited Gordon Wood, 217].

³⁵ Christian G. Fritz, *American Sovereigns: The People and America's Constitutional Tradition before the Civil War* (Cambridge: Cambridge University Press, 2008), 40-41.

³⁶ John Adams, "Adams to Thomas Jefferson," in *The Adams-Jefferson Letters*. ed. Lester J. Cappon (Chapel Hill, North Carolina: University of North Carolina Press, 1959 [1813]), 398.

³⁷ Aristocrotis, "The Government of Nature Delineated or An Exact Picture of the New Federal Constitution," in *The Complete Antifederalists*. ed. Herbert J. Storing. (Chicago: University of Chicago Press, 1981 [1788]), 198-212.

qualification attached to that office. But no such restriction was enacted, partly, as Bernard Manin reminds us, for reasons of political expediency.³⁸ Convergence on any one qualification by delegates from different states was unlikely. At the same time, there was also considerable skepticism that ownership of property was an indicator of any special virtue one would bear as a legislator.³⁹ Indeed, many, especially among the anti-federalists, were sceptical that the wealthy educated elites were capable of rising above their sectional interests. From this perspective, the constitution appeared to be an aristocratic power grab designed to 'raise the fortunes and respectability of the well-born few, and oppress the plebeians'.⁴⁰

Ultimately, the natural aristocracy was expected to find its place in the Senate, not through the stipulation of property as a prerequisite, but through the mechanism of indirect election. As Jefferson argued, 'I have ever observed that a choice by the people themselves is not generally distinguished for its wisdom. This first secretion from them is usually crude and heterogeneous. But give to those so chosen by the people a second choice themselves, and they generally will chuse wise men'.⁴¹ Similarly, Madison insisted that indirect election through state legislators would offer a more 'select appointment' which would 'refine' the popular will through a process of 'successive filtrations'.⁴² Why indirect elections might serve this function is an issue to which I return in the fourth section. Presently, I turn to debates over indirect elections in India.

3. The Epistocratic Defence of Indirect Elections in the Indian Constituent Assembly

The Indian constitution, adopted in 1950, bore a striking resemblance to its (pre-Seventeenth Amendment) American counterpart with respect to the design of its second legislative chamber. It brought into force a bicameral legislature, with the first chamber (*Lok Sabha*) elected directly by voters, and the second chamber (*Rajya Sabha*) elected by state legislators. Moreover, like the original American Senate, the Rajya Sabha adopted a six-year term for its members and the requirement of biennial renewal of the assembly. The decision to compose the second chamber on an indirectly elected basis passed through India's constituent assembly with little controversy. With few

³⁸ Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), 107.

³⁹ Rufus King, *The Debates in State Conventions* (hereafter, DSC), ed. Jonathan Elliot (Add information), Vol. 2: 35.

⁴⁰ Gordon Wood, *Radicalism of the American Revolution*, 286

⁴¹ Thomas Jefferson, "To Edmund Pendleton [1776]," in *Writings*, ed. Merrill D. Peterson (New York: The Library of America, 1984), 756.. At the Philadelphia convention, Roger Sherman from Connecticut argued, in a similar vein, that direct election by the people was 'not likely to produce such fit men as elections by the State Legislatures'. He urged that 'They [the people] want information and are constantly liable to be misled'. *RFC* 1: 154, 48.

⁴² *RFC* 1: 50.

exceptions, most participants in the assembly accepted the need for an upper legislative chamber of this kind. Moreover, this decision does not appear to have attracted much controversy from commentators on the constitution-making process at that time. We can, however, obtain important insights into the constitution-makers' preference for an indirectly elected *Rajya Sabha* by historicising their position and locating it in past debates over constitutional reform in India. Debates leading up to the Government of India Act 1935—the predecessor of the post-independence constitution—are particularly instructive in this respect. The issue of direct versus indirect election was a particularly divisive one in these debates, revealing crucial splits between colonial officials and political leaders in India, as well as internal disagreements in both camps.

In negotiations over the 1935 act, the controversy over indirect election focused not on its use for the upper chamber of India's legislature, but on its use as the prescribed mode of election for *both* legislative chambers, including the lower house. Indeed, the initial bill provided for indirect elections to both chambers, only to incorporate direct election to the upper chamber after an amendment in the House of Lords. The lower chamber, though, in a departure from traditional bicameral legislatures, would continue to be indirectly elected.⁴³ At Westminster, officials highlighted the magnitude of India's constituencies as a justification against adopting any element of direct election in India's constitutional structure. In their view, direct election was simply unworkable due to the large geographical and numerical size of India's territorial constituencies. Due to their 'unwieldy and unmanageable' nature, they were seen as 'prevent[ing] that close and intimate contact of the representative and his constituency which is the very essence of representative government'.⁴⁴ A constituency in India, one member of parliament in Britain, reminded his colleagues, could 'become as big as Scotland with a population as big as that of Wales'.⁴⁵ While direct election served, therefore, as a legitimate ideal, the 'geographical facts have got to be faced'.⁴⁶ Some commentators, especially among the Indian political leadership of the time, disagreed with this evaluation. It was indirect election, rather than the size of India's constituencies, that most threatened to disrupt the connection between electors and their legislators.⁴⁷ Direct election, from this perspective, was necessary to sustain a sense of personal responsibility among representatives towards their constituents.

⁴³ For an overview, see Andrew Muldoon, *Empire, Politics and the Creation of the 1935 India Act: Last Act of the Raj* (Burlington: Ashgate Publishing Company, 2009), 146-9

⁴⁴ G. N. Joshi, *The New Constitution of India* (London: Macmillan & Co., 1937), 164

⁴⁵ Austen Chamberlain, *HC Deb* 06 March 1935 vol. 298 col. 2003

⁴⁶ William Ormsby-Gore, *HC Deb* 06 March 1935 vol. 298 col. 2016

⁴⁷ 'Memorandum by Sir Tej Bahadur Sapru' in *Joint Committee On Indian Constitutional Reform* Records Vol. III (London: His Majesty's Stationery Office London, 1934), 267-68[Hereafter JCICR]

The case for rejecting direct election altogether in the 1935 Act rested on a further argument. This argument underscored the lack of education, and in particular, widespread illiteracy among the Indian masses, as a pivotal consideration in legislative design. Indirect elections were necessary because it was 'difficult for the illiterate voter to understand the complicated and in some cases highly technical issues which the Federal Government would deal with under the new constitution'.⁴⁸ The capacities required for participation in direct elections, then, remained in need of cultivation. Thus, the Indian masses were conceived as being in a stage of development where they were not yet prepared to choose their representatives directly:

The basic difficulty of the problem is that the very great majority of the population of India have not yet reached the stage in which they can effectively or wisely be entrusted with self-government. The vast majority of the population, whether by reason of their poverty or the districts in which they live or their illiteracy, are quite incapable of taking the same part in politics as do the electors of this country and most European countries.⁴⁹

Concerns about the size of the territorial constituencies and the incapacities of India's voters frequently overlapped in practice. What made the magnitude problem particularly insurmountable, fuelling the lack of contact between legislators and their constituents, was the underdeveloped state of communications in the country.⁵⁰ For proponents of indirect election, India lacked a public sphere that allowed the circulation of public opinion. Engagement between voters and their constituents on matters of public interest was impossible not merely because of the vast territory that each constituency encompassed, but also due to the illiteracy of the population. This view was a continuation of a longer tradition of British political thought, iterated over successive movements for suffrage reform in the metropole, which held that to be 'part of the public was to be part of the national political conversation'. Such conversation involved 'active forms of participation, such as attendance at political meetings or involvement in political associations' but also a 'reading public'.⁵¹ Indeed, the expansion of the suffrage in Britain had been defended in part by appealing to the rise in formal education among the working classes and the accompanying growth in readership of newspapers and periodicals. The press had helped mitigate local distinctions, making communicative links between spatially separated voters possible. In doing so, it brought political actors together in a discursive space, like participants in the Greek *Agora*.⁵² These mediated forms of political conversation on matters

⁴⁸ "Joint Memorandum submitted by the British Indian Delegation" in *JCICR* III, 216.

⁴⁹ Viscount Wolmer, *HC Deb* 10 December 1934 vol 296

⁵⁰ Austen Chamberlain, *HC Deb* 06 March 1935 vol. 298 col. 2003, 2005; 'Memorandum by the Earl of Derby, the Marquess of Zetland and Sir Austen Chamberlain, on direct versus indirect election' in *JCICR* II C, 371; John Kerr, *JCICR* II B, 816-817.

⁵¹ James Thompson, *British Political Culture and the Idea of 'Public Opinion', 1867-1914* (Cambridge: Cambridge University Press, 2013), 35.

⁵² See, for instance, John Stuart Mill, *Considerations on Representative Government*, 378.

of public interest were not possible, colonial officials held, in a predominantly illiterate society like India.

It is worth noting that concerns about the capacity of the Indian voter to choose a suitable representative were not confined to politicians in Westminster. Even among India's political leaders, who had largely insisted that the Government of India Act ought to establish a directly elected lower chamber, there remained considerable support for an indirectly elected upper legislative chamber. As early as 1928, a memorandum for constitutional reform submitted by an Indian all-parties conference—more commonly known as the Nehru Report—had recommended the adoption of a bicameral federal legislature with an indirectly elected Senate. In its defence of this proposal, the report urged that indirect election would ensure that 'the right kind of men may be chosen'. Direct election was unlikely to secure the election of able individuals. Instead, it was prone to deterring their participation in politics, for they would be put off by the 'shouting and tub-thumping which a modern democratic election with a wide electorate involves'. The provincial legislatures, on the other hand, would comprise people of 'a high degree of intelligence', allowing them to properly discern who merited a senatorial post.⁵³ There was near unanimity on this point at the Round Table Conference in London (1930-32) between colonial officials and Indian representatives, which laid the foundations for the 1935 Act.

The limited debate over bicameralism and legislative design during the constituent assembly debates after independence demonstrated significant continuity with the dominant position in discussions over the 1935 Act. By the time the post-independence constitution was under debate, the magnitude of India's constituencies ceased to constitute a major political controversy shaping discussions over legislative design. Rather, India's constitution-makers drew on the second line of argument outlined above, raising concerns about voters' putative incapacities, in defending the value of an indirectly elected chamber. Indeed, some members of the constituent assembly went as far as to advocate the complete elimination of direct election from the new constitution, and its substitution with indirect election even with respect to the lower chamber of federal parliament. Ananthasayanam Ayyangar, for instance, took this view, reminding his colleagues that 'More than 14 per cent are not literate in our country and it will take long to make them literate'.⁵⁴ Lok Nath Mishra, who would later serve three consecutive terms in the *Rajya Sabha*, defended a similar view, advocating the exclusive use of indirect election instead of the constitution's adoption of a directly elected lower house. Ordinary voters in India, Mishra worried, were unsuited for a system of

⁵³ All Parties Conference, *The Nehru Report: An Anti-Separatist Manifesto* (New Delhi: Michiko and Panjathan, 1975[1928]), 94-95; Also see *Indian Round Table Conference (Second Session)* Vol. 1: 114, 263.

⁵⁴ *Constituent Assembly Debates: Official Report* [hereafter, CAD] (New Delhi: Government of India Press, 1946-1950) 11: 663.

direct election under universal suffrage: 'they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses'.⁵⁵

Concerns over citizens' incapacities must be read, moreover, against the background of the wider approach towards democratic institutions prevalent among the political leadership at India's founding moment. India's political elites held an instrumentalist view of democracy in the postcolonial period, whereby a democratic system was valuable only to the extent that it facilitated the realisation of desirable objectives. Chief among these goals was the idea of economic development, a pivotal concept in the ideological landscape in which Jawaharlal Nehru, the first premier, and his colleagues operated. They held that the post-independence state had to concern itself, first of all, with the speedy realisation of objectives like 'sufficiency of food, clothing, housing, education, sanitation etc'.⁵⁶ Indeed, the colonial state had been harmful precisely because of the constraints it had placed on the realisation of these aims. The post-independence state, on the other hand, 'represented the only legitimate form of exercise of power because it was a necessary condition for the development of the nation'.⁵⁷ A further related goal in the mind of the post-independence elite concerned the transformation of society through the power of the new state, a project that Sandipto Dasgupta describes as 'transformational constitutionalism'.⁵⁸ From this perspective, the Indian masses were presently characterised by their 'backwardness' and hostage to pre-modern identities based, for instance, on caste and religion. This view, of course, had a long history in the discourse over civilisational backwardness which had underpinned British justifications for colonial rule. For the postcolonial elite, such backwardness was merely a contingent feature of a poorly run colonial administration, which could be alleviated by a well-intentioned leadership capable of undertaking radical social reform. The village, in particular, figured as a suspect site, still marked by deeply hierarchical social relations. It was, as B.R. Ambedkar—a key architect of the constitution—put it, 'a sink of localism, a den of ignorance, narrow-mindedness and communalism'.⁵⁹ Thus, Nehru as well as a significant section of his Congress colleagues viewed the post-independence state as an instrument to 'uplift' disadvantaged groups through means like the

⁵⁵ *Ibid.*, 647.

⁵⁶ Jawaharlal Nehru, 'To Mahatma Gandhi,' *Bunch of Old Letters* (Delhi: Oxford University Press, 1988 [1945]), 508.

⁵⁷ Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993), 203.

⁵⁸ Sandipto Dasgupta, 'A Language Which Is Foreign to Us': Continuities and Anxieties in the Making of the Indian Constitution,' *Comparative Studies of South Asia, Africa and the Middle East* 34, no. 2 (2014): 229.

⁵⁹ *CAD* 7: 39

abolishment of caste discrimination and the representation of marginalised social groups in public life.⁶⁰

The two objectives of economic development and societal transformation were closely linked. Antiquated social relations and politics grounded in pre-modern identities were conceived as a threat to the 'real' problem of economic backwardness. These prevented the masses and their leaders from rising above their narrow sectional interests and thinking in terms of a common good, namely national economic development and the alleviation of poverty. Conversely, economic progress, alongside the spread of science and education, was seen as a way of diminishing 'pre-modern forms of social life and behaviour'.⁶¹ Indeed, the social backwardness of the Indian masses, on this account, was largely a product of their poor economic conditions, remediable through a programme of industrialisation and redistribution. Crucially, these twin goals were not merely chief objectives for the post-independence state or even just the yardstick against which its success would be measured. Rather, they served as the very *preconditions* for the sustenance of a democratic regime. The project of social and economic development was, therefore, one of 'transforming the masses into the people capable of self-rule'.⁶² This view manifested the postcolonial elites' anxieties around the establishment of universal adult suffrage against the background of a pre-industrialised agrarian society in a departure from the usual trajectory of the modern European state. Social reform, similarly, was a necessity since India's 'dizzying, often fractious, and potentially centrifugal diversity' threatened to undermine the cultivation of a 'national unity', an apparent prerequisite for democracy. Indeed, the introduction of a democratic regime threatened to give further impetus to the 'fissiparous' tendencies of the masses, who could be led astray by divisive, self-interested leaders.⁶³

Ordinary voters, due to their apparent economic and social backwardness, were seen with suspicion when it came to their capacity to select leaders who could realise the urgent objectives that the nascent Indian state faced. According to the dominant vision of democracy at the time, the new polity required a set of political leaders who possessed the technical insight required to alleviate poverty and lay the foundations of a strong economy. Legislators had to be individuals 'capable of appreciating, who are capable of even

⁶⁰ Like economic development, this understanding of social transformation, too, was a significantly contested one. The chief ideological critique came from Gandhi and his allies who vested their faith for social reform in a non-statist paradigm of collective moral action. This was dismissed by the dominant political elites, however, as a pre-modern antiquated vision of the state. See Nazmul Sultan, 'Self-Rule and the Problem of Peoplehood in Colonial India,' *American Political Science Review* 114, no. 1 (2020): 81–94.

⁶¹ Benjamin Zachariah, *Developing India: An Intellectual and Social History, c. 1930-50* (Oxford: Oxford University Press, 2005), 295.

⁶² Sultan, *Self-Rule*, 92.

⁶³ Uday S. Mehta, 'The Social Question and the Absolutism of Politics', *India Seminar* 615 (2010).

suggesting, courses of policy, lines of administration' to the government.⁶⁴ The expertise needed from leaders, though, 'was not simply technical expertise, but also an expertise of morality and values'.⁶⁵ Leaders needed to be capable of effecting a transformation of the socially backward masses. This required the willingness to rise above one's community identity and challenge undesirable social norms. Moreover, leaders would also need to show restraint and avoid the temptation to benefit from the divisive tendencies of the masses for electoral gains. Faced with such concerns, it is unsurprising that India's constitution-makers, like their American counterparts, toyed with the idea of qualifications for legislators. Although an educational requirement of this kind enjoyed limited support in the constituent assembly, it was discarded once it became clear—as in Philadelphia—that any neat delineation of the properties necessary in a good legislator was an elusive task.⁶⁶ Seen in this light, a second chamber, elected on an indirect basis, presented an alternative way of securing leaders with the necessary qualities in the face of concerns about citizens' apparent incapacities.

4. The Epistemic Case for Indirect Elections

The argument for indirect election in the United States and India leaned on a loose idea of 'refinement' or 'filtration', but these metaphors were largely left unexplored. In what follows, I aim to offer a charitable interpretation of the reliance on indirect election as an epistocratic mechanism capable of selecting competent senators. This model relies on the assumption of a difference between what we might call *screening competence* and *decision-making competence*. The latter refers to the ability of citizens or some sub-group of citizens to determine which policies or laws ought to be enacted. Screening competence, on the other hand, refers to the ability to select individuals who possess adequate decision-making competence.

In the *first stage of filtration*, voters are able to screen for decision-makers (state legislators) with greater decision-making competence than they themselves hold. This is supposedly made possible by the fact that screening for a competent decision-maker is less epistemically demanding than directly making those decisions for oneself. In other words, even if voters may not necessarily be the best judges of policy, they are able to screen competently for those who can make such decisions in a competent fashion. Crucially, greater decision-making competence also putatively facilitates better screening competence. In other words, by virtue of selecting more competent decision-makers (state legislators) than themselves, voters are expected to elect individuals who are also better at screening further decision-makers (senators). Without this assumption, there would be no reason why one could

⁶⁴ K. T. Shah, *PD 2.4*: 2504; for more on parliament's role, see Bool Chand, 'Trends in Democratic Government,' *The Indian Journal of Political Science* 4, no. 1 (1942): 6-14.

⁶⁵ Zachariah, *Developing India*, 253.

⁶⁶ See, for instance, debate that followed Shah's proposal for an educational qualification. *CAD VII*: 1178.

not merely rely on voters' screening competence to select suitable senators. After all, as we noted, voters are assumed to have sufficient ability to screen for suitable state legislators. Why would they not also possess the ability to select adequately competent senators? The epistemic 'surplus', as such, leans on the case that state legislators are still more competent than ordinary voters at screening for senators. This, then, grounds the *second stage of filtration* where state legislators elect senators still more competent than themselves. Though, as directly elected representatives, they may not be expected to have adequate decision-making competence required of senators, their superior screening competence vis-à-vis voters allows them to choose senators with the necessary competence.

The argument outlined here serves as a plausible reconstruction of the constitution-makers' argument for indirect elections in the United States and India because it captures key features of their account. It accounts for both, anxiety about citizens' competence and the emphasis on securing competent individuals to house the second chamber. It enables us to see how indirect elections might serve as a mechanism linking these two concerns, that is, the need for securing a second chamber of competent individuals despite the putative incompetence of the ordinary voter. It does so, moreover, in a way that unpacks the idea of indirect election as a device for 'refinement' or 'successive filtrations', demonstrating the epistemic benefits generated by each stage of the electoral process.

Further, the account described here is also consistent with the logic that historically grounded the case for representative government more generally. Routing the exercise of political power through elected representatives, rather than vesting it directly in the people, was historically seen as a way of filtering public opinion through a select body of citizens. In electing candidates to office, voters would be compelled to judge the relative merits of individuals and offer their vote only to those who most distinguished themselves from others through some relevant quality (ability to work towards the common good, expertise in delivering economic development, or the moral capacity to eschew sectional appeals). They would 'refine and enlarge the public views' by 'passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations'.⁶⁷ Citizens, moreover, were typically presumed competent to select this 'chosen body of citizens'. Thus, Thomas Jefferson argued 'leave to the citizens the free election and separation of the aristoi from the pseudo-aristoi, of the wheat from the chaff. In general they will elect the real good and wise'.⁶⁸ The people, Madison argued, would have 'virtue and intelligence to select men of virtue and wisdom'.⁶⁹ Similarly, in the Indian case, members of

⁶⁷ James Madison, 'The Federalist 10,' in *The Federalist Papers*, 53.

⁶⁸ Thomas Jefferson, *Writings* (New York: Library of America, 1984), 1306.

⁶⁹ *DSC* 3: 536.

the constituent assembly could argue that the people may not be as 'smart' but they nevertheless possessed adequate 'common sense' to select suitable representatives to decide on their behalf.⁷⁰ As Francisco Herreros notes, several commentators on republican government have traditionally relied on a similar assumption concerning otherwise ignorant voters' capacity to rely on shortcuts to distinguish 'good' from 'bad' types of office-holders. He argues that 'Republican authors usually assumed that the people lacked adequate information about politics' and yet they 'could use a variety of signals to discern the politicians' type'.⁷¹

The case for indirect election builds on the above idea of representative democracy and its epistemic advantages. It begins with the idea it shares in common with the standard argument for the election of representatives, namely that putatively incompetent (or less competent) citizens can elect decision-makers more capable than themselves. Rather than stopping at one filtration, however, the argument for indirect election presses the advantages of undertaking the same process twice. It insists that state legislators can select senators still more capable than themselves. The connection between the argument for indirect election and the case for representative democracy more generally was particularly visible in Progressive Era debates over the Seventeenth Amendment. Recognising this point, senator Elihu Root would insist in Congress that the proposed amendment was ultimately an 'expression of distrust for representative government'. Ordinary voters, he reminded his colleagues, 'knew very little or nothing' about senatorial contests 'except what they get from newspapers'.⁷² It was only right, then, that the power to elect senators remain with the very state legislators in whom such voters had rightly vested their faith. Indeed, the link between the traditional case for representative government and indirect election was apparent to at least some advocates of Senate reform as well. As I demonstrate later, however, they welcomed scepticism towards traditional arguments for representative government, insisting on a closer connection between the people and the democratic system.

⁷⁰ *CAD*VII: 1368

⁷¹ Francisco Herreros, 'Screening before Sanctioning: Elections and the Republican Tradition,' *European Journal of Political Theory* 5, no. 4 (2006): 429. The notion that citizens can choose suitably competent representatives by relying on cues is an established one in democratic theory. In their recent work, Ryan Pevnick and Dimitri Landa have argued that 'Voters take their cues from the best information available about the leaders' performance and about the record of the potential challengers'. They then make decisions about competing candidates 'on the basis of those records and further competence-related information revealed in the course of campaigns'. Pevnick and Landa, *Representative Democracy as Defensible Epistocracy*, *American Political Science Review* 114, no. 1 (2020): 7. Also see Thomas Christiano, 'Against Democracy', *Notre Dame Philosophical Reviews* (19 May 2017).

⁷² Elihu Root, 'The Direct Election of United States Senators,' in *Addresses on Government and Citizenship*, ed. Robert Bacon and James Brown Scott (Cambridge: Harvard University Press, 1916), 269, 271.

No doubt, one may question whether elections can adequately serve as a screening device for competent decision-makers. I shall later highlight concerns raised by those who sought to problematise the assumption that elections generate refinement in the manner outlined above. Such arguments, as we shall shortly see, questioned the premise that state legislators chosen by ordinary voters would be more capable at screening suitable senators than the voters themselves. They contended that if voters were indeed incapable of screening senators, then there was little reason to believe that state legislators chosen by the very same voters would somehow prove more capable. For the most part, however, the remainder of this article emphasises criticisms directed at the epistemic case for indirect elections that would apply *even if* the assumption about elections' screening capacity were conceded. Such criticisms do not cast suspicion on the possibility that indirect elections might be epistemically advantageous if actors behaved in the manner this model requires. Rather, they emphasise that neither voters nor state legislators can be compelled to vote purely on the basis of their screening competence (as opposed to other factors which the subsequent section will discuss).

It is worth noting that the case for indirect election may be reconstructed in an alternative way. In the model I have presented above, I have assumed that the greater competence state legislators possess vis-à-vis ordinary voters is *exogenous*. That is, it focuses on the capacity of elections to *select* legislators who are already competent. By contrast, constitutional design that privileges *endogenous* competence relies on participation within legislative work as a way of *fostering* competence within individuals; it is indifferent to whatever prior competence they might hold. The alternative account of indirect election, then, might understand filtration in the first stage as a function of endogenous competence that legislators come to acquire. State legislators, on this view, acquire their greater decision-making competence—and consequently, higher capacity to screen for legislators—by serving in the legislature. Madison hints at the salience of such competence when he reminds us that knowledge of public affairs ‘will be acquired to best effect by a practical attention to the subject during the period of actual service in the legislature’.⁷³ Although less frequent in constitution-making debates in India and the United States, the argument from endogenous competence may also explain constitution-makers' reliance on indirect election as an epistocratic device. In this article, I focus primarily on the argument from exogenous competence because of the role it historically played in grounding the case for indirect election. However, the subsequent analysis in this article also speaks to the argument that conceptualises competence as endogenously acquired. That is because both arguments—regardless of how they conceptualise the superior competence state legislators hold vis-à-vis ordinary citizens—assume that state legislators will draw on such competence to choose senators still more competent than themselves. As I argue, critics of indirect election in America and India

⁷³ James Madison, ‘The Federalist 53’ in *The Federalist Papers*, 268.

challenged this claim from two directions. They emphasised that state legislators had, in fact, lost the ability to draw on any putative competence in the election of senators since their decisions were now dominated by the preferences of either voters or party leaders. These objections, examined in the next section, apply to indirect elections whether one conceptualises state legislators' competence as exogenous or endogenous.

5. Rethinking the Epistemic Case for Indirect Elections

I now turn to criticisms of indirect election offered in the United States and India. As I demonstrate, critics in both polities posed a compelling challenge for each putative stage of filtration that the case for indirect election rested upon. In doing so, however, they also problematised the case for direct representative democracy as well. Indeed, critics in America and India were aware of this dilemma, and I outline their attempts to address the implications of their critique.

5.1 Questioning the Logic of Filtration: From Voters to State Legislators

As we noted, the 'successive filtrations' case for indirect elections seems to rest on the assumption that ordinary voters could choose suitable intermediate electors (state legislators) who, in turn, could go on to select still more capable individuals for senatorial office. This assumption went largely uncontested during America's founding debates. The lone critic on this point was James Wilson who insisted that there was little reason to believe indirect elections would entail the selection of better individuals than direct elections by ordinary citizens. Indirect elections were simply a futile mechanism in trying to filter better candidates into the Senate. He reasoned that one could not consistently deny voters' ability to choose senators while also affirming their capacity to choose appropriate secondary electors: 'Will the choice of the people be less valid than the choice of electors? That will not be pretended, since the electors themselves will derive all their authority from the people'. Challenging his critics to demonstrate otherwise, he urged that 'inconveniences unavoidable in elections by the people, but altogether foreign from elections by electors, ought to be shown clearly and undeniably on the other side'.⁷⁴

This objection would resurface during debates over the Seventeenth Amendment, a century later. Citing James Wilson's argument from the Philadelphia Convention, Albert Beveridge insisted that there seemed no reason why indirect elections would result in the selection of better leaders than those chosen by voters through direct election. If voters were capable of choosing persons who could elect suitable senators, they were capable enough to elect suitable senators by themselves. It was unclear why voters might be competent enough to perform the former task, but unsuited for the latter.⁷⁵ In

⁷⁴ James Wilson, *Collected Works of James Wilson*, ed. Kermit L. Hall and Mark David Hall (Indianapolis: Liberty Fund, 2007 [1789]), 1: 304-305.

⁷⁵ *USS* 61.3: 2252

a similar vein, William Borah mocked proponents of indirect elections, claiming that:

there seems to be an idea that some mystic, necromantic power exists somewhere in the Government or in this Chamber to perform the functions of government after the people themselves have ceased to act in regard to it; after they have become corrupt and incompetent. It seems to be the opinion of some people that after all living pride and all patriotism have departed from the people that still there would be left somewhere sufficient virtue to operate the Government successfully.⁷⁶

Perhaps, one might argue, choosing a suitable state legislator involves fewer demands on the capacities of ordinary voters, compared to selecting a senator tasked with deciding questions of national policy. Voters could reliably select suitable state legislators, on this line of argument, because such choice involves questions about local policies—questions concerning localised, situated knowledge that is more easily available. That is, a voter understands what is best for his or her respective district or neighbourhood, and is well-positioned to select someone with greater competence than themselves to advance its interests. The problem, as critics of indirect elections during the Seventeenth Amendment highlighted, was that state legislators, in this case, could only claim superior insight on local state-level issues.⁷⁷ If the basis for the putative refinement in the first stage is citizens' competence on local issues, then the only superior insight state legislators could claim over their voters, too, would be restricted to such issues. In that case, state legislators could command no greater trust compared to voters in their ability to choose suitable senators on the basis of national questions.

The upshot of the pro-amendment position was this: if voters could elect suitable state legislators, as the case for indirect elections assumed, then one could not consistently deny their ability to directly elect suitable senators. But *were* voters capable of choosing suitable state legislators? A further prong of the progressives' case against indirect election generated some uncertainty on this front. The debate over the Seventeenth Amendment was not restricted merely to the alleged inconsistency in the successive filtrations thesis. Rather, it also relied on the parallel claim that indirect elections had been a vehicle for corruption in Senate elections. Direct election, by contrast, would prevent the election of senators who represented the 'great corporate interests' and put an end to 'the buying and selling of senatorial seats by negotiations more or less corrupt, with members of the legislature'.⁷⁸ This opened critics of indirect election to an obvious dilemma: by criticising indirect elections for their capacity to fuel corruption, they had also opened their position to scepticism about the capacities of voters to elect senators in a direct fashion. After all, the

⁷⁶ USS 61.3: 2646

⁷⁷ USS 61.3: 2255.

⁷⁸ 'Direct Election of Senators', *The Independent* (10 July 1902), 1672; 'Henry Cabot Lodge as an Apostle of the Autocratic Money-Controlled Machine and the Foe of Popular Rule', *Arena* 36 (November 1906): 534-541.

reformers' critique of indirect election leaned on widespread corruption among state legislatures—assemblies directly elected by the people.

Critics of the Seventeenth Amendment were quick to recognise this predicament facing their adversaries' position. On the floor of the Senate, Elihu Root would insist that 'If the people of any state are not satisfied to trust their legislature to discharge the constitutional duty of electing senators, let them cure their own faults and elect a legislature that they can trust'.⁷⁹ Even A. Lawrence Lowell, a defender of the Seventeenth Amendment, recognised the implications of claims about widespread corruption in the state legislatures: 'Clearly it is unfair to elect incompetent or untrustworthy men and blame the legislature for not being wiser and better. It is particularly irrational on the part of men who have voted for representatives of that character'.⁸⁰ Rather, it stemmed, as George Haynes—another defender of the amendment—asserted, from the 'general influences which have lowered and commercialised American politics throughout the system'. In this context, the direct election of senators would 'present no insuperable barrier to the demagogue and to the corruptionist'. It was, Haynes suggested, a 'debatable question whether he would not find his path easier and more direct than at present'.⁸¹

Thus, the argument about the role of indirect election in promoting corruption was self-defeating from the perspective of progressive advocates of the Seventeenth Amendment. It seemingly exposed voters' inability to directly elect suitable state legislators, undermining the case for allowing them to directly elect senators. On the other hand, the attempt to place blame for corruption on voters, as critics of the Seventeenth Amendment sought to do, generated a further dilemma. Whatever rhetorical value this strategy may have had in trying to unsettle the reformers' case for trusting voters with a direct vote for senators, it also created difficulty for the constitutional scheme that critics of the amendment sought to defend. That is, this specific way of resisting the direct election of senators came at the cost of also undermining the argument for their indirect election. That argument, as we have noted, relied on the premise that voters could reliably elect state legislators who were capable of selecting suitable senators. If the very point of indirect election was to refine the popular will, it was not enough to place the blame on voters for corruption among state legislators. To the extent that indirect elections were supposed to refine the popular will, this argumentative move only highlighted their failure to do so. As one commentator noted, acknowledging the impasse, 'To say that the responsibility ultimately rests with the people is, however, to

⁷⁹ Root, *Direct Election*, 253

⁸⁰ A. Lawrence Lowell, *Public Opinion and Popular Government* (New York: Longmans, Green & Co, 1913), 138.

⁸¹ George H Haynes, *Election of Senators* (New York: Henry Holt and Company, 1906), 267; Also see Jesse Macy, *Party Organization and Machinery* (New York: The Century Co, 1904), 12-14.

say also that in the nature of things there can be no specific remedy'.⁸² Ultimately, arguments about corruption facilitated by indirect election generated difficulty for both, proponents of the Seventeenth Amendment who sought to place the blame on indirect election, and critics of the amendment who attempted to hold voters responsible.

Let me now turn to a further objection historically offered against the refinement argument: one cannot ensure that voters act in the manner that the argument from refinement presupposes. We cannot get inside each voter's head and compel her to think only about who would make a better decision-maker, while blocking her from thinking about which policies she prefers, and who would better pursue these. How can we prevent the following phenomenon, Mill asked, whereby 'the voter would prefer to use his own judgment in the choice of a representative, and only lets another choose for him because the law does not allow him a more direct mode of action'? After all, he insisted, 'if this be his state of mind; if his will does not go along with the limitation which the law imposes, and he desires to make a direct choice, he can do so notwithstanding the law'.⁸³

Indeed, as legislators emphasised in debates over the Seventeenth Amendment, something of this sort had already started to occur for elections to the Senate.⁸⁴ At the turn of the nineteenth century, and shortly before the amendment was enacted, various states had instituted mechanisms aimed at converting indirect elections into de facto popular votes.⁸⁵ In 1901, the 'Oregon Plan' set up a straw election for the Senate, where voters expressed their preference for a senatorial candidate and state legislators were bound to adhere to the outcome of that vote. Prescriptive elections of this kind were soon adopted by thirteen other states. This had the effect, critics argued, of effectively converting indirect elections into direct elections, just as had happened with the electorate college for Presidential elections a century ago.

The first stage of the successive filtrations argument, therefore, encountered a critical obstacle. Such filtration depended, in the first instance, on voters choosing state legislators who would exercise their judgment in choosing the most suitable candidates for senatorial office. If the voter based his choice of a state legislator on the basis of his preference for senatorial candidates, however, no such refinement could take place. Additionally, this conversion of

⁸² H. Von Holst; 'Ought the United States Senate to be Abolished?', *The Monist* 5, no. 1 (1894): 20.

⁸³ John Stuart Mill, "Considerations on Representative Government [1861]," in *The Collected Works of John Stuart Mill*, ed. J. M. Robson (Toronto Press, London: Routledge and Kegan Paul), 19, 483.

⁸⁴ *USS* 61.3: 2179 (Joseph L. Bristow); *Ibid.*, 1104–06 (William Borah); *United States House of Representatives* 62.1: 215 (Frank Wheeler Mondell).

⁸⁵ *USS* 61.3: 2493. *Ibid.*, 2496; For an overview, see Frederick A Cleveland, *Organized Democracy: An Introduction to the Study of American Politics* (New York: Longmans, Greens & Co, 1913), 362-366.

state legislative elections into a de facto process of senatorial elections did not merely render the indirect method futile, but also had further consequences for federalism and states' interests. As we have noted, neither Lowell nor Haynes was particularly convinced that direct elections would result in the choice of better senators than those chosen through the indirect method. Yet, they both came to support the Seventeenth Amendment, recognising, first, that the election of senators was now a de facto direct affair; and second, that this had important consequences for the *impact of the indirect method on the functioning of state legislative assemblies*. Thus, Lowell argued, 'The strongest argument for withdrawing' from the state legislatures, the power to elect senators was that the present method threw them 'almost inevitably into the vortex of national politics'.⁸⁶ Similarly, Haynes stated that his 'conviction as to the wisdom of the change effected by the Seventeenth Amendment arose far more from observation of the influence of the legislative election of senators within the States than from optimistic assurance that the personnel or efficiency of the Senate would be notably improved by popular election'. Indirect election through state legislatures was 'depriving the State of a voice in the Senate' by blurring the lines between national and state politics.⁸⁷

Would the argument against indirect election explored above also apply to the Indian case? In 1930, Naresh Chandra Roy, a lecturer in Political Science and a scholar of comparative legislative design, commented favourably on the Nehru report's recommendation of indirect election for the federal second chamber. Comparing the use of indirect election in the United States with its potential use in India, Roy emphasised a salient difference between the nature of bicameral design in both countries. In America, senatorial elections were characterised by corruption and the swamping of local issues in large part due to the disproportionate power that senators enjoyed. Because of its role in judicial and executive appointment, the Senate's posts were 'looked upon as prizes'. Roy's analysis was not altogether novel. Progressive Era defenders of the Seventeenth Amendment had explained the failure of indirect elections by appealing precisely to the attractiveness of senatorial posts. Studying the Indian case, though, Roy noted that since 'the authority of the senators is to be limited to their legislative functions alone', it was unlikely that the 'the interests of the provincial legislatures will be very much subordinated to the election of central senators'. Moreover, since the interests involved in membership of the federal second chamber were relatively weaker, 'it is not likely that wholesale corruption of the American type will be transplanted to this country'.⁸⁸

5.2 Questioning the Logic of Filtration: From State Legislators to Senators

⁸⁶ Lowell, *Public Opinion*, 133.

⁸⁷ George Haynes, 'The Changing Senate,' *The North American Review* 700, no. 205 (1914): 231.

⁸⁸ Naresh Chandra Roy, 'The Problem of a Second Chamber in India,' *Calcutta Review* (April 1930), 75.

We can now turn to the second stage of the successive filtrations argument, where refinement in public choice supposedly takes place by virtue of the judgment exercised by state legislators in the selection of suitable senators. Critics of indirect election in America, as well as India, emphasised how the rise of organised parties vitiated this assumption. It was implausible to insist that state legislators ought to exercise independent judgment in electing a senator. Although the working of indirect elections, as originally conceived, presupposed such judgment, it was precluded by the development of the political party: 'The theory was that the legislature of the state should look all over the state, bound by no consideration of party, restrained by no obligation of any kind except the duty of selecting the wisest, the bravest and the purest man for senator'. But 'political parties at that time did not exist in the sense in which they now exist'.⁸⁹ On this view, the founders did not foresee the present operation of the indirect method where senators were chosen through the dictates of party bosses rather than the independent assessment of candidates by state legislators.⁹⁰ Now, discipline through the caucus, and the lure of rewards for advancement in the party, crowded out the exercise of any such assessment in the state assemblies. As James Bryce noted:

Choice by a legislature had come to mean choice by a party majority in a legislative caucus, and the determination of that caucus had often been prearranged by a small group of party managers; or if that did not happen secretly, it had been settled in a party convention which directed the members of the party in the legislature how to cast their votes. There was anyhow little room left for free selection by the legislature. The people or rather those wire-pullers who manage the people and act in their name had usually settled the matter beforehand. So hard is it to make any scheme of indirect election work according to its original design; so hard is it to keep even a written and rigid constitution from bending and warping under the actual forces of politics.⁹¹

Similar concerns emerged during the making of the Indian constitution. In the constituent assembly, K. Hanumanthiyya emphasised that the debate over the Rajya Sabha in the Indian constitution needed to take cognisance of the role political parties would play in the legislative process. He challenged the assumption that indirectly-elected Rajya Sabha members, untethered from the preferences of ordinary voters, would be compelled to account for their decisions to state legislators tasked with electing them. 'Every major decision', K. Hanumanthiyya argued, 'is taken in the party meeting and not in the Upper House or Lower House'. For Hanumanthiyya, then, the 'real legislature' was the party's internal forums. 'Once the question is decided in the party meeting, it does not matter whether the question is brought up before the Lower House or the Upper House'.⁹² Similarly, Damodar Swarup Seth reminded his colleagues in the assembly that indirect elections would fail to enhance the

⁸⁹ USS 61.2: 7127 (Jacob Gallinger).

⁹⁰ USS 61.3: 2252-53, 10 February 1911 (Albert J. Beveridge). Also see *Ibid.*: 2493 (Norris Brown).

⁹¹ James Bryce, *The American Commonwealth*, with an Introduction by Gary L. McDowell, (Indianapolis: Liberty Fund, 1995[1888]), 1: 90.

⁹² CAD 7: 1311

quality of legislation because 'the members of the second chamber are also elected on party system'. Moreover, members of this chamber would 'work and vote under the guidance of the party in much the same way as members of their respective parties in the Lower House' rather than an independent assessment of legislative proposals.⁹³

This particular critique of indirect elections, too, faced a dilemma similar to the one I previously highlighted. If organised partisanship disrupted the case for indirect election, it did not leave the case for *direct representative democracy* untouched either, as commentators in America had noted. Emphasising the usurpation of the senatorial election process by unscrupulous party bosses merely underscored the peoples' inability to make wise electoral judgments. 'The people cannot be compelled to elect the candidates of the boss unless they want to do so', Lowell asserted.⁹⁴ If voters continued to elect a state legislator who had ceded his powers to the party boss, then there was little reason to believe *indirect elections* were the problem. This simply showed that party elites would continue to intercede in the relationship between voters and their legislators, elected directly or indirectly. In what follows, I refer to this as the *party problem* for bicameral design.

The Progressive Era response to this problem is well-known. For many commentators in this period, there existed a simple remedy to the puzzle posed by the party problem. They acknowledged that organised partisanship posed a challenge for representative democracy per se, and not just for indirect election. A greater degree of direct democracy was, therefore, necessary to replace (or weaken) representative democracy and the 'the trinity of death - the corporation, the party machine, and the political boss' which had captured it.⁹⁵ This required greater control by voters over legislation through initiative and recall, and the weakening of parties' control over legislators through the adoption of primaries. On this view, legislatures operated in corrupt ways because parties had severed the link between legislators and voters. Consequently, voters could not be blamed for corruption in the legislatures, nor their capacity to select suitable legislators questioned, because they no longer held the power to select or sanction legislators. Establishing such a link required, first, elimination of the party machinery's power to field a candidate over and above the public's preferences. The move towards party primaries signified an attempt to shift the locus of power from party elites to ordinary voters. Further, the simultaneous move towards initiative and recall was aimed at ensuring that legislators would be accountable to their constituents, rather than party

⁹³ CAD7: 988

⁹⁴ Lowell, *Public Opinion*, 138.

⁹⁵ Samuel Gompers, 'Initiative, Referendum, and Recall,' *American Federationist* 19 (1912), 695; see Thomas Goebel, 'A Case of Democratic Contagion': Direct Democracy in the American West, 1890-1920,' *Pacific Historical Review* 66, no. 2 (1997): 213-30.

bosses. Thus, Progressive Era analysts did not back down when faced with the charge that voters were ultimately responsible for failing to resist the usurpation of the legislative process by party elites. Instead, they affirmed that the proper remedy consisted in dismantling such control and shifting power back to voters.⁹⁶

In India, too, debates over legislative design were accompanied by a critique of the role of parties in a democratic system. Consider, for instance, the views of Manabendra Nath Roy, founder of the Radical Democratic Party and a prominent thinker in the mid-twentieth century. According to him, the rise of organised parties had distorted parliamentary democracy beyond recognition.⁹⁷ Pointing to the role of the whip at Westminster, he argued that legislators were now subservient to the interests of their party bosses. Similar practices had already begun to surface in India, Roy warned. The Congress party, led by Nehru, ensured that ‘members of the parliament are responsible to the party to the incredible extent that they are not entitled to speak freely even in the parliament. Any criticism of the party will be allowed only in closed party meetings’.⁹⁸ For Roy, then, democratic constitutional design needed to avoid privileging the party as the locus of power. His draft constitution sought to remove parties not merely from the *second* chamber but also the *lower* chamber of his proposed federal legislature. The lower chamber, the Federal Assembly, was to serve as an indirectly elected chamber, with members chosen by electors appointed by local self-governing units (Local Peoples’ Committees). In Roy’s case, legislators chosen through indirect election nevertheless remained tethered to ordinary voters. The Local Peoples’ Committees retained the ability to recall members of the Federal Assembly, initiate legislation, and demand a referendum. This would ensure that ‘power will be captured not by a party, but by those Committees, which will constitute the foundation of a democratic State’.⁹⁹ As such, his draft constitution attempted to marginalise the role of parties by using mechanisms not dissimilar from those advocated by Progressive Era reformers. Indeed, the view that a democratic constitution should privilege local self-governing units having priority over a federal legislature with marginal residuary powers was not uncommon among critics of party government in his time, even as it failed to gain much traction with the dominant political leadership.

However, despite his orientation towards direct democracy, Roy continued to worry about the need for an enlightened elite in parliament, characterising the ordinary Indian voter as marked by ‘cultural backwardness’ and a low ‘general

⁹⁶ For an overview of these proposals as they concerned party organisation, see Nancy Rosenblum, *On the Side of Angels: An Appreciation of Parties and Partisanship* (Princeton: Princeton University Press, 2008), Chap. 4.

⁹⁷ M.N. Roy, *New Humanism: A Manifesto* (Delhi: Ajanta Press 1981 [1947]), 8.

⁹⁸ M. N. Roy, *Politics, Power and Parties*. Calcutta: Bose Press (1960 [1947 – 1952]), 93.

⁹⁹ M. N. Roy, *New Orientation* (Delhi: Indian Renaissance Institute, 1949 [Reprinted 1982]), 133.

intellectual level'. In such circumstances, democracy could not consist in merely 'a counting of heads'.¹⁰⁰ As such, the second chamber (Council of State) of his proposed federal legislature limited its membership to professionals from a range of narrow fields. This council would comprise engineers, economists, scientists, medical professionals, historians nominated by their peers, and philosophers, social scientists, and civil servants picked by the government. These enlightened professionals were to play a central role in economic planning and lead the project of national development. Their 'creative genius, intellectual detachment and moral integrity' meant that they were better equipped to perform this function than the 'loafers, lunatics and careerists' presently found amidst parties' ranks.¹⁰¹ They would, according to Roy, serve as the 'modern version of philosopher-kings'. As such, his response to the party problem vis-à-vis the second chamber in India leaned in the opposite direction from antipartyist commentary in Progressive Era United States. Rather than insisting on the weakening of the party and stronger control by voters over their representatives, he advocated the need for non-partisan unelected experts in the second chamber.

Roy's vision of a second chamber comprising individuals from certain professional backgrounds found its parallel in the constituent assembly, culminating in the nominations clause (Article 80.3) that set aside twelve places (out of two hundred and fifty) for those with 'special knowledge or practical experience in respect of such matters as literature, science, art and social service'. Under the nominations clause, the President, acting under the advice of the Cabinet, would nominate individuals from these backgrounds to membership of the Rajya Sabha. In the constituent assembly, this provision was defended on the grounds that it would secure members who possessed the necessary wisdom and independence to legislate in a competent fashion.¹⁰² This view, however, seemed to underestimate the nature of the party problem. After all, if parties undermined the kind of competence individual legislators could bring to the chamber, then the nominations clause would attract the same difficulties as indirect elections. Renuka Ray, former President of the All-India Women's Conference argued this point, stating that 'it is quite true that people, even if they were scientists or doctors, who go through the process of political life into Upper Chambers – or Lower Chambers for the matters of that – have to enter the arena of politics and Party Politics'.¹⁰³ If anything, by routing the identification and nomination of suitable experts through the cabinet, the nominations clause merely accentuated the possibility of partisan appointments.

¹⁰⁰ Ibid., 165.

¹⁰¹ M.N. Roy, *New Humanism*, 46; Roy, *New Orientation*, 81

¹⁰² R.K. Chaudhari, *CAD VII*: 1220; N. Gopalaswami Ayyangar, *CAD IV*: 927-8; P. S. Deshmukh, *CAD IX*: 487).

¹⁰³ *CAD VII*: 62

Conclusion

This article has argued that indirect elections offer a historical example of a constitutional device of epistocracy. Historically, their use was underpinned by concerns about competence in the legislature and anxieties about ordinary citizens' capacities to identify suitable legislators. Rather than appearing as a substitute to democracy, then, epistocratic institutions can appear as one aspect of a system of government. Following the systemic turn in deliberative democratic theory, one might suggest an institutional 'division of labour', such that some institutions perform democratic functions while others allocate power in a way that tracks political competence.¹⁰⁴ Indeed, the use of indirect elections for the second chamber, alongside a directly elected first chamber, seemingly allowed for this kind of division. I have tried to unpack why such elections might act as a 'filtration' device, enabling state legislators with greater competence than an ordinary voter to select still more competent senators. This argument, as I have demonstrated, had its share of critics in America and India, where each stage of apparent filtration came to be scrutinised. The objections offered by such critics remain relevant today, posing considerable difficulties for the epistocratic case for indirect elections.

In the first instance, this case would have to confront James Wilson's challenge as to why voters, despite their inability to select suitable senators, can be expected to make reliable judgments when it comes to intermediary electors. The case for indirect election attempted to build on the traditional argument for representative election: voters select state legislators more competent than themselves; such legislators are competent not only in determining policies for their state but also choosing senators still more competent than themselves. Critics of indirect election questioned these premises, asking why, if voters could indeed choose sufficiently competent state legislators, they were incapable of choosing senators directly. As we have noted, the case for voters' capacity to select suitable senators was complicated by the further insistence that indirect elections had generated corruption in senatorial contests. For critics of the Seventeenth Amendment, this betrayed the peoples' incapacity for directly electing suitable representatives. For reform advocates, however, such corruption was evidence that indirect elections could not offer the kind of filtration they seemingly promised.

Even suppose we could grant the assumption that citizens are better at choosing intermediary electors than electing senators directly, there is a further objection to which indirect elections can be subject: it is difficult to ensure that citizens vote for state legislators in the manner presupposed by this theory, rather than on the basis of their preferences for national offices like the Senate. Even in circumstances where the indirect election process does not practically become a *de facto* direct election, voters' preferences for

¹⁰⁴ For more on the systemic approach, see John Parkinson and Jane Mansbridge, eds. *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge: Cambridge University Press, 2012).

specific indirectly elected legislators can dominate their choice of a given secondary elector. This concern is also consistent with recent empirical work which demonstrates how state-level legislative elections frequently become ‘second-order’ elections, which reflect ‘voter preferences about the President and Congress with little or no variation based on the performance or promises of state officeholders and candidates’.¹⁰⁵ This kind of ‘second order’ voting, then, obstructs the kind of ‘refinement’ indirect elections assume, changing the direction of the supposed ‘filtration’ from senators to state legislators rather than the other way around.

Finally, I have also tried to draw attention to the objection that the rise of political parties disrupts the theoretical model underlying indirect elections. The objection urges that indirectly elected legislators and their intermediary electors enjoy far less independence than the epistocrat’s model assumes. Rather than serving as untethered decision-makers, able to act on their apparent competence, such actors find their decisions regulated by the party to which they belong. If anything, this argument has even greater force outside the United States, where legislative actors enjoy far less autonomy of the kind available in America’s decentralised party regime. The party system in the United States, as recent commentators have emphasised, is unique in its fragmented and decentralised nature.¹⁰⁶ In regimes with more centralised and disciplined parties, however, the influence of partisan leaders on intermediary electors and indirectly elected legislators is likely to be considerably greater.

Critics of indirect election, however, encountered challenges of their own. In the first instance, the two lines of criticism they advanced seemed in tension with each other. According to the first view, indirect elections had become de facto direct elections, as *voters* had already taken control of senatorial contests (with negative downstream effects for state legislative politics). According to the second view, though, it was the *party machinery* that had inserted itself into the electoral process, blocking state legislators from exercising any independent judgment. Moreover, once the problems attached to indirect election are confronted, representative democracy, too, faces similar worries. It is no wonder, then, that several commentators sceptical of indirect election were also attracted to mechanisms that sought to offer an alternative to representative democracy altogether: devices like referendums, initiative, and recall on the one hand, and appointment of experts on the other. Whether such alternatives can, in fact, surmount the partisan pressures that motivate their critiques of representative democracy—direct and indirect—however, remains open for debate. For as contemporary scholarship on party organisation recognises, decentralising power within the party often has the impact of strengthening the power of party elites by insulating them from

¹⁰⁵ David Schleicher, “Federalism and State Democracy,” *Texas Law Review* 95 (2017): 763.

¹⁰⁶ Fabio Wolkenstein, ‘Party Reforms and Electoral Systems: Proportional Representation Is More Hospitable to Internal Democratisation’, *Representation* (forthcoming), 10.

scrutiny by committed mid-level elites.¹⁰⁷ The move towards the appointment of experts as legislators, too, risks attracting the same partisan pressures that motivated the move away from a representative chamber, as critics of the nominations clause in India's constituent assembly argued.

The composition of a second chamber and its mode of election remain live questions in several democratic states today, including India where the Rajya Sabha persists as an indirectly elected chamber. Parliamentary theory and practice continue to grapple with non-partisan, non-electoral methods of filling second chambers. In Britain, for instance, the House of Lords Appointments Commission has attempted to select legislators standing above the party-political system. In democratic theory, sortition has emerged as a further alternative in legislative design for second chambers.¹⁰⁸ Such proposals reflect an attempt to secure a second chamber that is, at once, capable of responding to the epistemic challenges of a democratic system, while also avoiding the fetters generated by partisan pressures. Whether they can avoid the party problem and its attendant dilemmas, however, remains an open question. As the history of the debate over indirect election reminds us, any attempt at second chamber reform must take seriously the depth of the challenge that motivates the pursuit of reform in the first place.

¹⁰⁷ See, for instance, Richard Katz and Peter Mair, 'The Cartel Party Thesis: A Restatement,' *Perspectives on Politics* 7, no. 4: 759.

¹⁰⁸ Arash Abizadeh, 'Representation, Bicameralism, Political Equality, and Sortition: Reconstituting the Second Chamber as a Randomly Selected Assembly,' *Perspectives on Politics*, forthcoming; John Gastil and Erik Olin Wright, 'Legislature by Lot: Envisioning Sortition within a Bicameral System,' *Politics & Society* 46, no. 3 (2018): 303–30.