

**Equal Subjects:
Why Rulers Should Throw in Their Lot with the Ruled**

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1. Introduction

According to one joke, politicians are persons who would sacrifice *your* life for *their* country. Good jokes build on, and exaggerate, the real features of their subjects. The problem with this joke is that it describes politicians all too accurately, without hyperbole. Indeed, rulers make decisions that decisively affect the life prospects and well-being of the citizens, without having very much at stake in those decisions. For they are allowed to have privileged access to what they typically fail to provide for everyone: adequate health care, education, security, legal representation, among other crucial services. Is this license compatible with the principles of a just society? What can we legitimately ask of decision makers in terms of experiencing the consequences of their own decisions? These are questions of great practical and theoretical significance that have been almost entirely neglected in political philosophy.

In some places, police officers are required to live within the city in which they work. “KC” Becker, a member of the Colorado House of Representatives, has claimed that there is a good rationale for the requirement—even if she wouldn’t always endorse it, all things considered. “When officers live in the city where they work,” she

wrote, “they have a greater stake in the community. They are more invested in it.”¹ The idea, as I take it, is that the safety of the members of the police force and their relatives, as citizens, will depend on how well they perform at work, as officials. Conversely, policemen who do not inhabit the city where they serve will not have to suffer, in the conduit of their private lives, the consequences of their actions as public servants. In having to face the level of insecurity that their actions permit, police officers are being required to have “skin in the game” on a par with ordinary citizens.²

My purpose here is to provide a philosophical justification for such a system of political commitment and accountability—not merely for police officers, of course, but public servants in general. I shall argue that justice is contravened when those who exercise political power do not experience the consequences of their own decisions on a par with the ordinary citizen. In the next section I further explain the nature of the question that I want to examine, and I identify two general competing solutions. The third and fourth sections advance instrumental and non-instrumental arguments, respectively, for the solution that I find most plausible, called *equality of stakes*. The fifth section addresses a few objections, followed by a brief conclusion.

¹ “KC” Becker, “Police Officers as Neighbors,” *Daily Camera*, January 20, 2013 (http://www.dailycamera.com/ci_22404773/guest-column-police-officers-neighbors).

² N. Taleb and C. Sandis, “The *Skin in the Game* Heuristic for Protection Against Tail Events.”

2. Two Conceptions of Justice in Decision Bearing

To what extent should citizens be allowed to participate, as a matter of justice, in the production of political decisions? Philosophers have thought long and hard about this problem. Call it the problem of justice in political decision *making*. By contrast, the following question has rarely been posed, not to mention systematically addressed: To what extent should politicians participate in the suffering of political decisions? Call it the problem of justice in political decision *bearing*. In this section I seek to clarify the nature of this issue, outline two alternative conceptions, and get some preliminary worries out of the way.

The subject matter of political justice, as a domain of the broader idea of social justice, is the organization of political power.³ This comprises the fair allocation of political rights and duties. For the most part, political philosophers have focused on the first of these elements—the rights of political participation. Less has been said on the fair allocation of political duties.⁴ The problem of justice in political decision

³ See J. Rawls, *A Theory of Justice*, Section 36.

⁴ To be sure, the literature on whether citizens have a general *moral* obligation to obey the law has largely shaped political philosophy as a discipline. But this is a different issue. My question has to do with the fair distribution of *legal* obligations on the assumption that some such obligations will actually and effectively be imposed in a society. So one might reject the idea that people ought to obey the law, as well as the idea that people should be forced to obey the law, and still recognize the importance

bearing, as I am construing it, belongs to this relatively neglected area of political morality. When it comes to suffering the workings of the state, are there any special duties that (former) rulers ought to have vis-à-vis ordinary citizens? What can we demand from rulers, as a matter of justice, in terms of being subjected to their own decisions?

In our times, a broadly egalitarian idea of justice in decision bearing seems to underlie the practices and institutions of most representative systems. Federalist 57 offers a useful articulation:

representatives . . . can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments, of which few governments have furnished examples.

This general egalitarian idea, however, can take different meanings. On a minimalist conception, which I shall call *equality of legal subjection*, rulers are merely required not to create a special legal system for their own advantage. Equality of legal subjection forbids arbitrary privileges for the political class—or any other class for that matter. The aristocratic prerogatives that existed before the French Revolution

of devising a *fair* distribution of duties in a context where some such duties will be established as a matter of fact.

illustrate the antithesis of this view. Briefly put, like cases should be treated alike. The identity of the agents should not matter. The rulers who make unjustified exceptions for themselves violate justice.

Clearly, equality of legal subjection is not a very demanding or controversial notion of justice in decision bearing. It does not even require politicians to be subject to the legal system at all. Indeed, after their term, they may simply forego their share of rights and duties by moving to a different polity, or, in the case of local officials, to a different county or state. Ex ante residency requirements for the occupancy of public office may be in place, but equality of legal subjection does not call for ex post residency duties. This conception only establishes that, *if* rulers choose to continue to inhabit the territory that they governed, laws and policies would then apply to them as they apply to ordinary citizens. So you may rule and leave—whatever you do as a ruler need not affect you as a citizen later.

But the cited passage can also inspire a more robust conception of justice in decision bearing. I shall call it *equality of stakes*. The fundamental idea is to create an effective “communion of interests,” to use the expression in Federalist 57, between the rulers and the ruled. Equality under the law is a necessary but not sufficient condition for justice in decision bearing. It is further necessary, on this view, that rulers throw in their lot with the ruled. This means that rulers ought to have as much to win or lose as ordinary citizens when it comes to the success or failure of laws and policies. Justice requires, at least *prima facie*, equality of stakes.

Consider, to illustrate, a fundamental public service: the justice system. Equality of legal subjection is fulfilled as long as the police, judges, prosecutors, and

public defenders do not make arbitrary distinctions to the benefit of those who have ruled. However, to the extent that rulers are able to hire the most competent lawyers to represent them in court, they hardly have the same stake as ordinary citizens in the overall functioning of the justice system—which depends, of course, on what rulers do, or refrain from doing, during their term. Were rulers required to get a public defender, they would be in a “communion of interests” with those who have no other option.

Many great political thinkers have likened the ruling of states to the steering of ships. Rawls, for instance, wrote the following: “The passengers of a ship are willing to let the captain steer the course, since they believe that he is more knowledgeable and wishes to arrive safely as much as they do.”⁵ There are two ideas here. One is the alleged epistemic superiority of the captain, the other is the “identity of interests” between the captain and the passengers. Rawls failed to notice, however, the problem of immunity that motivates equality of stakes as a conception of justice in decision bearing: public officials are allowed to have emergency boats that are unavailable to ordinary citizens. This, I shall argue, is at least *prima facie* unjust. Like the pilots of a plane, rulers should survive or perish with the rest of the passengers. The sheer act of boarding the plane goes a long way in making the pilots accountable. Rulers of states should be held to a similar standard. Want to rule? Cast in your lot with the ruled.

Identifying the institutional ramifications of the ideal of equality of stakes is a difficult task. However, to begin with, it is clear that rulers should not be allowed, for some time after their term, to flee to a different political community. Some *ex post* residency duties should be established as a condition for the occupancy of certain

⁵ J. Rawls, *A Theory of Justice*, p. 205.

offices. The idea is that rulers, as equals, be *actually* subject to the legal system, and not merely if they choose to continue to reside within the polity. Though modest, this requirement of justice in decision bearing already represents a significant departure from the model of equality of legal subjection.

But equality of stakes has further implications. Rulers, on this view, ought to suffer the workings of the state as average citizens, not as privileged ones. This involves, or so I shall assume, that there is a *pro tanto* case of justice to require rulers and their dependants to utilize public services. Moreover, since the quality of these services often varies, rulers ought to suffer them at the level of quality experienced by the average citizen. Arguably, there are different ways to institutionalize this idea. For present purposes, I shall refer to a system that we might call, invoking the state-ship metaphor, *pilotage responsibility*.

PILOTAGE RESPONSIBILITY: As a condition for the occupancy of high public office, politicians and their dependants, for the duration of their term and beyond, will be required to reside within the polity and, if they seek out a certain service, they would be randomly appointed to a public provider, say, a public hospital, a public school, a public defender, et cetera.

Notice that politicians would not be coerced under this scheme. If they do not like the requirements for the exercise of public office, they can simply do something else for a living. Anyone interested in a career as a public servant would know what the costs would be in advance, and could freely choose not to seek office. The pilotage

system, then, would not be an abhorrent violation of individual liberty. It would be on a par with some reasonable measures currently adopted by some polities, such as the prohibition for some officers to later occupy certain positions in the private sector, in order to prevent conflicts of interests.

To avoid another potentially serious misunderstanding, it is crucial to keep in mind the following distinction. Pilotage responsibility only requires politicians to use the public system if they need and wish a certain service by a third party. This is very different from forcefully putting politicians in a position of need for services, so that they would actually have to use the public system. The idea of pilotage responsibility is not, for instance, that we should infect politicians with some bug and then require them to use the public health system. The idea is merely that if they get sick, and want to get help, they ought to go to a public hospital. To use another example, politicians would not be required to do jail time just to ensure that they actually experience the workings of the prison system. Instead, the idea is that, if they are duly sentenced to jail, they have to go through this experience like an average citizen, unlike those who pay for cell upgrades in some places.⁶

Which positions should count as “high public offices” for purposes of pilotage responsibility? Would the requirements be in place for the rest of a politician’s life, or only for some time after her term? Exactly which public services would enter into the scheme? Would all public servants have to opt for all public services, or only for some? Who should be included in the category of “dependants”? These are complex

⁶ See J. Steinhauer, “For \$82 a day, Booking a Cell in a Five-Star Jail,” *The New York Times*, <http://www.nytimes.com/2007/04/29/us/29jail.html?pagewanted=all>

questions that I shall not try to answer in this paper. My goal is only to argue for the general idea of equality of stakes as pilotage responsibility. Specifically, my claim is that there is a *pro tanto* case from justice to adopt a system of this sort. One leg of the argument is grounded on instrumental considerations. The other comprises a non-instrumental line of reasoning.

Before turning to the argument, let me address a potential objection to what I have claimed so far. On a pervasive view of modern democratic politics, the problem of justice in decision bearing is actually nonexistent. There is no unequal exposure to the effects of laws and policies between the rulers and the ruled because in a modern democracy the rulers *are* the ruled. Through their representatives, citizens rule over themselves. There is in this case no set of rulers, as distinct from the ruled, making decisions that do not affect them.

Jean Hampton wrote: "Our elected 'representatives' don't represent us in any literal sense—as if we were doing the ruling 'through them.' This is nonsense. They rule and we don't."⁷ Hampton was absolutely right. Alas, such nonsense is the foundation of many arguments on democracy. In representative systems, campaign promises and party platforms are not binding; proposals are typically vague and general; candidates can misrepresent their views; electoral contests are about a tiny fraction of the issues that come up for decision during tenure in office; issues are ultimately decided after bargaining and deliberation; voters can only choose among those who run for office; and, of course, the options that many people vote for are defeated. In these circumstances, to say that citizens are authors of the laws and

⁷ J. Hampton, "Democracy and the Rule of Law," p. 34.

policies that they have to obey is a joke. It is as absurd as saying that N.F.L. team owners play football through their coaches and athletes. Team owners and citizens, to be sure, can affect whether their team or government will be successful, depending on the choices they make. But it is obvious that they do not call and execute the plays, nor make laws and policies. It is public officials who rule.

3. The Instrumental Case for Equality of Stakes

The promise of modern democracy was to bring the interests of competent rulers into alignment with the interests of the ruled. The instrumental argument in this section is that equality of stakes would do exactly the same thing—bringing about a communion of interests between the rulers and the ruled—but in a far more effective way.

Although citizens are not turned into rulers, in a modern democracy the ruled are given the power to decide who shall rule. Popular elections, on the one hand, provide citizens with an opportunity to select those who seem to be better capable and disposed to promote their interest. On the other hand, once in office, rulers have an incentive to look after the interests of the ruled if they hope to fare well in future contests. Like any other system, this one is perfectible. Many political thinkers are indeed working on potentially beneficial innovations. But our capacity to improve the basic institutions of representative systems (our capacity, that is, to make the electoral sanction of rulers more effective) is limited. Shielding the political process from the corrupting force of economic powers, or creating deliberative forums where rulers would have to justify their behavior, for instance, are certainly desirable

measures. But to create a robust communion of interests we have to widen our perspective. Too much attention has been paid to what we can do at the level of decision making. It is time to start thinking about measures of decision bearing.

The system introduced in the previous section, pilotage responsibility, would align the interests of rulers with the interests of the ruled in a very effective way—far more successfully, I submit, than competitive elections. As rulers would be randomly assigned to public services, they would have a very strong incentive to improve the quality of these services. Knowing that they would have to attend a public hospital if they need medical attention, for instance, public officials would have a strong reason to devote more and better resources to the public health system. They would have a large stake on their own performance as rulers. In this context, if politicians look after their own interest, they would be looking after the interests of ordinary citizens who have no choice but to rely on public services. By comparison, the prospect of losing an election is not nearly as powerful an incentive for politicians. Their basic interests are not at stake.

Notice how this can help eliminate corruption. Taking a bribe is easier when the subsequent costs in the quality of government are borne entirely by others. But rulers would think about it twice if they would not be able to use part of the bribe to avoid its negative consequences. If they cannot get private education for their children—in addition to a yacht—with a payoff that compromises the quality of public education, it becomes far less likely that policy makers would take it.

The random device in pilotage responsibility prevents politicians from gaming the system. If they could choose any public provider, they would channel significant

resources to specific providers, while the quality of the system as a whole would not change. It is already the case that not all public hospitals, schools, and so on, are equal. But under pilotage responsibility politicians would be randomly appointed to public providers. Since they would not be able know their provider in advance, rulers could not target it for improvement.

One could object that many of the least advantaged of society could still suffer under this scheme. This is for two reasons. First, politicians would probably never become so destitute that they would have to use the state's anti-poverty programs. As a result, the quality of these very important services would not be improved. Second, politicians could focus on improving only a certain proportion of public providers, to the point where they judge that the probability of being assigned to a low-quality provider is sufficiently slim. In this scenario, some the most destitute persons would see little benefit.

In response, let me first clarify that pilotage responsibility is not a magic bullet against social injustice. My claim is simply that it would be an improvement—a *vast* improvement—in our efforts to create a more just society. Moreover, notice that many of the public services that presumably would be covered by a system of pilotage responsibility are very much anti-poverty programs: in having better education, health care, legal representation, security, and so on, the poor would be better off. There is not much more to say regarding the first point from the perspective of pilotage responsibility, but there might be other institutional schemes inspired by equality of stakes as a conception of justice in decision bearing that could be devised to ensure that politicians bears the costs of all unsuccessful anti-poverty programs. As

for the second point, there is a solution within pilotage responsibility. The random assignment of politicians to providers could be a two-step process of the following sort. In the first step, existing providers could be classified into three broad classes, depending on their quality, and rulers would be randomly assigned to one class of providers. In the second step, a specific provider would be randomly selected from that class.

There is a connection between the instrumental case for equality of stakes and recent arguments on the just allocation of the costs of decision making under risk. If we expose others to unreasonable harm, and the harm materializes, we should be required to cover the costs.⁸ Agents, in other words, should not be allowed to get away with gambles that affect the wellbeing of others. Justice in risk-sharing is thus largely a matter of corrective justice: if unreasonable harm occurs, the agent has an obligation of justice to repair the damage. However, it is also about incentives. The expectation of bearing the costs of unreasonable harm will motivate agents to take appropriate care. The Code of Hammurabi stipulated that the constructor of a house that collapses and kills its inhabitants should be killed in turn. An economist and a philosopher have recently argued that “this is the best risk-management rule ever.”⁹ It is indeed the best

⁸ According to A. Ripstein, whether exposure to harm is reasonable or not depends on how legitimate is the interest of the agent in performing the risky behavior, and how much care she exercises in preventing harm to others. See Ripstein, *Equality, Responsibility, and the Law*.

⁹ Taleb and Sandis, “The *Skin in the Game* Heuristic for Protection Against Tail Events,” p. 118.

in the sense that it creates the strongest incentive for building the safest house that the builder is capable of, even if the rule is unreasonable all things considered. This instrumental line of reasoning could even justify establishing greater costs for decision makers than those strictly demanded by corrective justice, since this would increase the incentives to act carefully.

Devices for justice in risk sharing and political decision bearing similarly require agents to have a stake in the consequences that their decisions have on others. However, there are important differences. The goal of any scheme of justice in risk sharing is to make sure that agents give due consideration to the interests of others in the legitimate pursuit of our own ends. In exercising our freedom, we have to be reasonably careful. If we are not, and we thereby harm others, we should be held liable. But if the status quo remains intact, agents do not owe anything to third parties.

Justice in political decision bearing is different. To rule is not to exercise a basic personal freedom, limited only by the standard of reasonable care. If that were the case, rulers would be allowed to do whatever they wanted as long as their actions caused no harmful alteration of the status quo—that is, of the state of affairs at the time they took office. Contrary to this, to rule is to occupy a position of service. The career interests of politicians should play no role, or a very minor one, in a moral theory about the proper conduction of public business. Individuals might be allowed to focus on their own interests in deciding whether to pursue office or not (within limits, as I argue in the next section). But their own interests should not guide them at all in the making of laws and policies, unless in doing so they best promote justice. For rulers have duties of justice to act in particular ways for the benefit of the governed.

Decision-bearing devices are instrumentally justified to the extent that they create effective incentives for rulers to fulfill these duties. In this regard, schemes to realize the ideal of equality of stakes, such as pilotage responsibility, are hard to beat.

4. The Non-instrumental Case for Equality of Stakes

Equality of stakes is not only justified as a means to ensure that rulers look after the interests of the ruled. It is also justified, I shall argue in this section, as an intrinsic requirement of political justice. Here is an outline of the argument:

- A. Politicians have a twofold fiduciary duty of justice:
 - a. To exercise their office with a view to bring about justice through the design of just laws and policies, and their just implementation.
 - b. To refrain from seeking and exercising public office if they would be outperformed by their competitors in the promotion of justice.
- B. Justice requires politicians to be committed to, and accountable for, the fulfillment of these duties.
- C. Traditional devices of commitment and accountability (oaths of office, competitive elections, disclosure, deliberation) are unsatisfactory because

- a. the extent to which the two duties of justice would be fulfilled by a prospective ruler, and the extent to which they have been fulfilled by an actual ruler, cannot be satisfactorily assessed by citizens.
 - b. the costs for suboptimal rulers (mere career costs) are negligible compared to the importance of what is at stake for citizens (their most basic interests and life-prospects).
- D. A model of commitment and accountability based on equality of stakes, such as the pilotage scheme, in which rulers cast in their lot with the ruled, is not only satisfactory, but also superior to the alternatives.
- E. Realizing equality of stakes, therefore, is a requirement of justice.

The fundamental obligation of rulers is to act in the benefit of their subjects by creating and maintaining a just social order. I take this to be fairly uncontroversial, especially since it is not necessary to stipulate here what counts as a just social order. Indeed, the validity of my argument does not depend on it. Our conception of justice, to be sure, is critical to determine which goods and services the state ought to provide, directly or indirectly. This, in turn, is critical to establish the scope of a scheme such as pilotage responsibility. But there is no need to settle this now. My argument, if correct, cuts across virtually all conceptions of political morality, except anarchism.

Perhaps (A.b) is a more controversial proposition. On reflection, it should not be. There is nothing more important, morally, than the exercise of political authority. The most basic interests of persons depend on the behavior of those who govern. The worst moral catastrophes of humanity, as well as the greatest moral accomplishments, have been carried out through the state. Only those who are highly competent and disposed to promote a just social order should pursue public office. Some might say that not anyone should be able to *reach* high positions of political authority, but everyone has a basic right to try. I would agree if, in the end, we had a method to effectively encourage, identify, and appoint those who are best suited to rule. But we do not. The rascals—not to mention suboptimal rulers—win elections all too often. It is surely a good thing that we can throw them out, but at that point the damage has already been done. Winning a poll does not vindicate anyone's efforts to seek public office. To the extent that, in entering the political competition, suboptimal candidates make the appointment of better ones less likely, they have a moral duty to curb their ambitions.

If we recognize that rulers and politicians do have the twofold fiduciary duty of justice, it follows that they ought to be required to take reasonable steps to commit themselves to the fulfillment of these duties, and to become accountable for their actions. The idea of commitment involves making a certain behavior costly down the road. Promising, for instance, is a commitment device. Breaking a promise has costs. In addition to hurting and disappointing the promisee, the promiser loses credibility. Thus, in promising an action, an agent makes it costly for himself not to carry out the action. Oaths of office are a form of promising, the breaching of which carries costs

specified by law. The related notion of *precommitment*, as used in the social sciences, is a radical form of commitment. It does not involve making the performance of an action costly, and hence less likely. Rather, it involves removing altogether the possibility of carrying out the action. In tying himself to the mast, Ulysses was no longer able to succumb to the call of the sirens.¹⁰ Accountability, on the other hand, is simply the process of submitting our actions—in relation to our commitments and duties—to proper scrutiny, with the possible consequence of experiencing costs and sanctions. The significance of political accountability is illustrated by its inclusion in the Declaration of the Rights of Man and of the Citizen. Article 15 reads: “Society has the right to require of every public agent an account of his administration.”

The central question at this point becomes: Among the reasonable institutional alternatives, which one is the most effective to ensure that rulers be committed to, and accountable for, the fulfillment of their duties of justice? The first point I want to make in this regard is that, contrary to what is natural to suppose, we cannot adequately determine the extent to which rulers have fulfilled, or will fulfill, their duties of justice by looking at the laws and policies that they (promise to) enact.

This is for various reasons. First of all, the morality of many if not most laws and policies is a function of their consequences, of the way in which they affect the lives of persons. But the effects of laws and policies are extremely hard to determine.¹¹ Ex ante, it is easy for *any* office-seeker to find convenient “social-scientific evidence” about the expected effects of the laws and policies that they favor. Ex post, at the end

¹⁰ See J. Elster, *Ulysses and the Sirens*.

¹¹ See J. Elster, *Securities Against Misrule*.

of their term, it is easy for any ruler to shift the blame in the absence of the desired outcomes. As they often do, politicians can claim that good results are still on the way, provided, of course, that the next cohort of rulers do not mess things up; that they were derailed by unfortunate and unforeseeable circumstances; that the opposition failed to support their policies; and so on. Unfortunately, it is actually hard to disprove these claims. Any analysis would be based on either counterfactuals or indirect evidence that is easy to argue against with other studies. This is further complicated by the fact that commitment and accountability judgments are largely comparative ones, as I have suggested. We want to know how a (prospective) ruler has performed (or will perform) in relation to the best qualified competitors. But, here again, there is no way counterfactually to know what the others would actually have done had they been appointed instead. None of this implies, however, that we cannot identify some laws and policies—and those who enacted them—as plainly unjust. However, on this basis, we can only hope for modest degrees of commitment and accountability.

Fortunately, we can devise robust commitment and accountability measures on the basis of how rulers relate to their own decisions, rather than the content of these decisions. It is not possible to assess with sufficient precision the extent to which the actions of rulers—the laws and policies that they enact and implement—promote justice. But we can robustly evaluate their commitment to justice and their readiness to be held to account by considering the extent to which they would submit to the consequences of their own decisions on a par with the citizens. The very adoption of a scheme of equality of stakes represents, in itself, the realization of both commitment and accountability in a greater extent than is possible through other devices, such as

oaths of office and public questioning sessions. Indeed, in being disposed, *ex ante*, to suffer the consequences of one's decisions on a footing of equality with others, we would signal our commitment to make sufficiently good decisions. And, *ex post*, in actually experiencing our decisions on equal terms with others, we would provide a solid account of our actions in office. But if we refuse to cross the bridge that we agreed to build and use, it means that we do not trust it enough.

Let me summarize. The enacted (or proposed) laws and policies of rulers (or office-seekers) are a defective informational basis for evaluating the extent to which they have fulfilled (or will fulfill) their duties of justice. Laws and policies that are not minimally just can surely be identified and condemned. But to evaluate many if not most decisions we need standards other than those of substantive justice. And I do not mean procedural standards of decision *making*. I mean standards of decision *bearing*. This is the central idea: any reasonable person who competes for office in a scheme of equality of stakes unequivocally commits herself to, and becomes accountable for, treating others as their equals in the process of governing and being governed. To the extent that this is a requirement of justice, and to the extent that equality of stakes realizes it better than any alternative arrangement, equality of stakes is in turn also required by justice.

5. Some Objections

The previous reasons for equality of stakes and pilotage responsibility only amount to a *pro tanto* justification. Whether, all things considered, a system of this sort should be

adopted remains an open question. As I have said, much will depend on the details of the proposed scheme. In the meanwhile, in this section I shall address a few general worries.

A. Adverse selection

Under a system of pilotage responsibility, the stakes of pursuing political office would increase significantly. While politicians would still be able to accumulate wealth and spend it on luxuries, they would not be able to obtain, on expectation, better-than-average public services such as legal representation, education for their children, health care, and so on. This would surely deter many people from seeking political office. The problem, according to this objection, is that the individuals who would be deterred are precisely those who we need to be in office: persons with the capacities and training for good policy making. For these are well-educated individuals who would be able to obtain high-paying jobs in the private sector, and they would be quite reluctant to accept the burdens of office under pilotage responsibility.

Let us assume for the sake of argument that, indeed, fewer capable people, thus understood, would pursue office. This effect, however, could still well be offset by the increased harmony between the interests of public officials and those affected by their decisions. In his classic account of the advantages of democracy, Tocqueville said: “It is no doubt important for the welfare of a nation that the men who govern it should be men of virtue and talent; but what is perhaps even more important is that these government officials should not have interests contrary to those of the masses they

govern, for in that case, their virtues might become almost useless, and their talents disastrous.”¹² I am not contending that we can be confident that, under pilotage responsibility, the convergence between the common good and the interest of officials would effectively counteract the negative deterrence effect. My claim is simply that this prospect is plausible enough to conclude that the case for pilotage responsibility is not currently defeated by the deterrence objection. At this point, we can only guess what the overall effect would be.

B. Perverse incentives

Under a scheme of pilotage responsibility, incumbents might be tempted to escape their ex post subjection duties by privatizing public services. For instance, to avoid sending their children to public schools, they might try to dismantle the public education system. This might actually be a good thing on some conceptions of justice. However, for other conceptions, this might be a strong enough reason not to adopt a system of equality of stakes, regardless of its other advantages.

This is a serious worry. Fortunately, however, there are simple fixes. One is to identify, on the basis of one’s conception of justice, the services that the state ought to provide, making it impermissible for politicians to avoid them. Alternatively, we could further stipulate that, in a scheme of pilotage responsibility, rulers would be randomly appointed to any of the private options that ordinary citizens are left with when no public provision exists. This would include the possibility of receiving no service, if

¹² A. de Tocqueville, *Democracy in America* (The Library of America), 266.

none of the private options are affordable to some citizens. These measures would effectively thwart perverse incentives to privatize.

C. Misplaced liability

Laws and policies are collectively enacted and implemented by numerous agents, with varying degrees of influence and responsibility. An honest, foresighted, and capable official might be unable, despite her best efforts, to halt the adoption of some harmful policy. Why, it could be objected, should she be burdened by the duties of pilotage responsibility? That seems to be like convicting the innocent. Similarly, since most officials make policy in one particular area of government only, it also seems unjust to make them liable for what officials in other areas do. Why, that is, should those who run the Ministry of Health, for instance, should be held pilotage-responsible for the policies of the Ministry of Education, and vice versa? The matter is further complicated by the fact that policy shifts are common and natural in representative systems with competitive elections. When power changes hands, new laws and policies typically follow. How could we, then, hold liable earlier officials for the long term effects of policies that are no longer in place, or have been substantially modified?

I think this worry is off target. Pilotage duties are not corrective devices to sanction public officials whose policies turn out to be visibly harmful. They are, instead, a device to promote the proper use of power. The goal is to ensure that rulers look after the public interest. Pilotage responsibility is thus about social rather than

corrective justice. Public officials ought to be seen as team players in an ongoing game over time. They stand or fall together. The proposal is not about individual performances, but the collectivity. Imagine a large, complex firm in which all high-ranking officials are entirely paid with stock, in equal amounts. If the firm underperforms and loses value, all the officials will be equally affected. Now, imagine that some of those officials excelled at their positions—they were as dedicated and proficient as anyone could be. On that basis, they demand not to be paid with stock and receive instead compensation proportionate to their effort. No one, I think, would argue that they would be entitled to it, that it would be an injustice not to fulfill their request. And the reason would be that they had already agreed to cast in their lot with the company. Despite the multiple disanalogies between such a firm and a state, this would be the same reason why the claim of injustice under a scheme of pilotage responsibility would fail. Office-seekers know that ruling is an ongoing collective effort, and they know the risks. If the prospects are not good enough for them, they can choose to stay in the private sector. No one will ever force them to rise to the challenge of steering the ship of state.

One could argue, however, that the stakes—access to health care, education, and so on—are too high in a system of pilotage responsibility for this response to be compelling. The idea would be that people have an inalienable right to purchase these services if they can afford it. But I do not think there is such an inalienable right. If there were, people could be forced not to give away (or spend or invest) their property to the point where they cannot afford to purchase these services. To see this, consider the following case. Imagine two wealthy doctors who marry and have two

small children. One day they come to believe that their lifestyle is deeply immoral, and decide to donate almost all of their property to the poor, and to move permanently to a low-income country to work for Doctors Without Borders. It is clear, it seems to me, that no one should prevent them from doing so, even though they, and their children, would no longer be able to purchase high-quality services of the sort we are considering. It could be said that this case is relevantly different, since under the scheme of pilotage responsibility people would still have the resources to pay for services, but they would not be allowed to use them. Yet the whole point is that, in freely accepting to serve as public officials, they voluntarily constrain the uses of their property. If we think people should be allowed to get rid of their property, we surely ought to think that they can establish limits for themselves on how they may use it.

D. Unfairness to dependants

I suggested that not only public officials, but their dependants too, would be randomly appointed to public providers. Some will regard this as unacceptable, given that the dependants of public officials have done nothing to *merit* the burdens of pilotage responsibility. It was not they who chose to occupy office.

Admittedly, the case for this component of equality of stakes cannot invoke the ideas of political justice developed in the previous sections. If subjecting the dependants of politicians is to be justified at all, the case has to be grounded solely on the instrumental value of making public officials look further ahead into the future to promote intergenerational justice. Let us assume for argument's sake that politicians

would indeed be less myopic and give greater consideration to the interests of future people under my proposal. Could the mitigation of intergenerational injustice justify the alleged injustice of subjecting the dependants of officials to the duties of pilotage responsibility?

First, it would be important to clarify whether it would be intrinsically unjust to include the dependants of public officials in the scheme of pilotage responsibility. To be the legal tutor of a minor implies having the right to control most aspects of the child's life. When someone comes of age, she acquires the right not to be thus controlled. But many of the choices parents make determine what their children will be able to do later in life. To see this, consider again the example of the doctors in the previous section: their children's opportunities would be seriously affected. Some might question the wisdom of their decision. But few will claim that they should have been forced not to make it. Now, it is not clear to me that similarly burdening our dependants by taking up public office under a system with pilotage responsibility would be any different.

That said, I am not ready accept, for instance, that a person should be allowed to borrow money by mortgaging, say, a fraction of their children's labor. What is the crucial difference, if any, between these examples? Would pilotage responsibility be more like the mortgage case, or the doctors case? I do not know the answers to these questions, and I cannot pursue them here. I have merely tried to suggest that we should not uncritically assume that it would be inherently unjust to include the dependants of public officials in the system of pilotage responsibility.

But let me assume, in any case, that it would be indeed inherently unjust to do that. One could still argue, however, that the measure can be justified all things considered. For then we would have to choose between two injustices: the one that future generations would suffer due to the neglect of politicians, and the one that the dependants of politicians would experience by being made liable through no fault of their own. It is not obvious that choosing the latter injustice would be wrong in a context of institutional design. This is especially true if we could give an economic compensation to those affected. One could say that public officials would then cease to be concerned with the impact of their policies on their children. However, that would not be true if parents are truly motivated to make their children as better off as possible. Politicians would want their dependants to be in the best possible condition, whether the system of pilotage responsibility would compensate them or not. If all this is correct, it is not clear that the objection defeats my proposal.

Conclusion

Some political scientists have validated the long-standing doubts that ordinary citizens have had about modern democracy. Despite all the talk about popular sovereignty, “citizens’ control over politicians is at best highly imperfect ... Elections are not a sufficient mechanism to ensure that governments will do everything they

can to maximize citizens' welfare."¹³ It does not follow, of course, that we lack good reasons to value democracy, especially when compared to the alternatives. As these political scientists point out, the conclusion should be instead that there is much room for improvement via institutional innovation. Unfortunately, however, most political philosophers continue to focus on the abstract justification of "democracy," paying very little attention to concrete institutional matters and decision-making processes. It is absolutely true that "since the great explosion of institutional thinking, when the present democratic institutions were invented—and they were invented—there has been almost no institutional creativity."¹⁴ Most of the few who have recently taken institutional innovation seriously have only proposed devices to make the electoral sanction more effective. The problem is that there is a limit to how much progress we can make by simply tweaking electoral institutions, broadly conceived.

In this essay I have argued for a novel approach, one that focuses not on decision-*making* but on decision-*bearing*. The key idea in my proposal, pilotage responsibility, is that justice would be advanced by requiring rulers to experience their own decisions on a footing of equality with ordinary citizens. Since the basic interests of rulers would be at stake, they would try to make far better decisions. A mistake can cost the pilot of an aircraft his own life. Hence they have the strongest incentive to perform well. On current democratic systems, those who rule also have

¹³ Bernard Manin, Adam Przeworski, Susan Stokes, "Elections and Representation," in *Democracy Accountability and Representation* (Cambridge: Cambridge University Press, 1999), p. 29.

¹⁴ *Ibid.*, p. 51.

the lives of others in their hands—in much greater numbers—but face a trivial cost for not performing as they should: namely, an uncertain electoral defeat. There is no communion of interests between the rulers and the ruled. Pilotage responsibility would go a long way towards fixing this problem, for the sake of present and future generations.

While this is certainly a radical proposal, I have presented it within the traditional framework of representative democracy. Why not, one might wonder, take a step further and rethink our current political institutions from the ground up? For instance, the idea that we should relinquish elections and appoint representatives by lot is an interesting proposal that has received much attention recently.¹⁵ In such a system it would seem that the interests of the ruled would be better aligned with the interests of decision-makers, since the distance between the two groups would have been bridged. A full assessment of such a scheme is beyond the scope of this discussion, but let us assume that it would indeed be an effective way to pursue the same goal that pilotage responsibility pursues. First, it should be noted that the two proposals are not in fact rivals. We could have random appointment together with pilotage responsibility. Since few would advocate the random selection of all high public officials (those in executive and judiciary positions would most likely be

¹⁵ See, for instance, Alexander A. Guerrero, “Against Elections: the Lottocratic Alternative,” *Philosophy & Public Affairs* 42 (2): 135-178, 2014, and Hélène Landemore, “Deliberation, Cognitive Diversity, and Democratic Inclusiveness: An Epistemic Argument for the Random Selection of Representatives” *Synthese* 190 (7), 2013: 1209-1231.

excluded from the scheme) there would be room for pilotage responsibility even in a full-blown lottery system. Moreover, the worry that, once in power, and regardless of their origin, randomly appointed representatives could behave corruptly and neglect the public interest can only be seriously addressed by ensuring that they have a significant stake on what they collectively decide, which is what pilotage responsibility is about.