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Beyond Electocracy: Rethinking the Political
Representative as Powerful Stranger

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This year's Chorley lecture examines certain theoretical and practical questions concerning political representation in constitutional democracies and advances three claims. (1) That electocracy (rule by elections) reduces the role of citizens to a series of discrete choice points, often shifting the actual moment of choice to the politician. (2) That a preoccupation with winner-take-all elections encourages representatives in the US to see themselves as powerful strangers with a proprietary interest in their position. (3) That representatives can deepen democracy by functioning as catalysts for citizen involvement not just surrogates for citizen views or identities. Drawing on historic and contemporary examples of ordinary people who mobilize collectively to build new forms of citizen power before and after elections, Professor Guinier adapts the framework of *collective efficacy* to describe this conceptual move. She argues that vibrant constituencies of accountability can transform the representational relationship to reimagine democracy as self-governance not just self-government.

In certain countries of Europe . . . the citizen is unconcerned as to the condition of his village, the police of his street, the repairs of the church or of the parsonage; for he looks upon all these things as unconnected with himself, and as *the property of a powerful stranger whom he calls the Government*.

Alexis De Tocqueville, *Democracy in America*, vol 1, ch 5

There is a move afoot in Great Britain to make the House of Lords a fully elected body. On 14 March 2007, Baroness Whitaker, a member of the House of Lords, voted against the majority of her party (the Labour Party) and against a majority of all members when she cast her vote to support a fully elected upper chamber of Parliament. Speaking two days before the vote, she declared that members of the House of Lords, an assembly of hereditary and appointed members, should be fully elected. Giving the people the chance to choose their legislators, Whitaker proclaimed, is an 'ancient and honourable tradition'.¹ Her colleagues were not persuaded. Comparing themselves to an appointed judiciary, some peers claimed that voting would only buy the appearance of legitimacy at the expense of

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independent judgment.² And we all know, other Lords said, the people are sick of politicians. A hereditary elite, they argued, is a more reliable source of wisdom and a more vigilant protector of the greater good.³

In this essay I take the question debated in the House of Lords seriously. Do more elections produce more democracy? I answer that question with a qualified negative: rule by elections, or what I have come to call 'electocracy', does not adequately serve the values of democracy. By electocracy I mean a political environment that defines itself by sacred moments of choice. The act of choosing in a competitive contest produces a clear winner. By casting their ballots, citizens bestow democratic accountability on the victor. At the same time, who wins the contest is even more important than who votes. And who votes is more important than the quality and quantity of citizen participation in, or the policy consequences of, other important political acts of self-government such as deliberation, persuasion or collective mobilization.

My argument is that a preoccupation with elections – especially in a winner-take-all environment – does not achieve the robust democratic accountability it promises. While modern ideas about representation suggest that the representative is bound in some way by the will of the represented, representatives were historically selected to bind their constituents, not the other way around.⁴ Consistent with that history, our electocracy too often serves to convert political office into a form of hereditary privilege.

As *the* pivotal decisional event, elections – or even 're-elections' – fail as the primary source of democratic accountability. First, elections too easily encourage a form of aristocratic deference. Voters are tutored to limit their authority over the official to one sanctified moment of choice. The process teaches them to yield to the judgment, character or vision of the elected official until the next election. Second, the process influences representatives to see themselves as agents of their donors rather than of their constituents. Those who fund elections enjoy continuous contact with the officials. By contrast, voters are not well positioned – between elections – to influence the connections between Election Day decisions and their consequences.⁵

Third, the process of districting in winner-take-all electocracies, such as in the United States, shifts the actual moment of choice to the politician and away from the voter. Incumbent politicians control the drawing of election district lines; they choose their voters rather than the other way around. The real election takes place long before the voters come to the polls. Confident of

1 Baroness Whitaker's remarks can be found at <http://www.theyworkforyou.com/lords/?id=2007-03-12a.475.0&s=speaker+per+cent3A12957#g500.0> (visited 20 Sept 2007). See also A. Cowell, 'Britain Wonders if More Elections Equal More Democracy' *New York Times* 18 March 2007.

2 See, eg, the speech of Lord Lawson of Blaby in favor of the status quo at <http://www.theyworkforyou.com/lords/?id=2007-03-12a.475.0&s=speaker+per+cent3A12957#g500.0> (visited 20 Sept 2007).

3 S. Lyall, 'In Britain's House of Lords, debate on electing its members' *International Herald Tribune* 13 March 2007.

4 A. F. Pollard, *The Evolution of Parliament* (New York: Russell & Russell, 1968) 152–153. The connection between contemporary electocracy and the history of representation is developed in Part I.

5 M. Weir and M. Ganz, 'Reconnecting People and Politics' in T. Skopcol and S. B. Greenberg (eds), *The New Majority: Toward a Popular Progressive Politics* (New Haven: Yale UP, 1997) 149–171.

re-election in gerrymandered districts, many representatives become possessive of their position, which they view as a career not just a conditional platform for service.

Together, these features of our electocracy reinforce the idea that the representative has a proprietary or ownership interest in their position. Elected officials learn to treat their offices as a kind of 'representational property'. Like Baroness Whitaker's peers, they feel they should exercise exclusive control over their seats, not as temporary caretakers but as long-term title-holders. Over time, they become more and more like the 'powerful strangers' Tocqueville associated with government officials in some nineteenth century European villages.

As Tocqueville warned, when government is viewed as the 'property of a powerful stranger,' the citizen becomes less concerned with the 'condition of his village' or 'the police of his street.' Citizens lose confidence in the ability of government to deliver on its promises. Disaffected citizens withdraw even from voting when they begin to see government as someone else's property.

To be clear, I do not take the position that we should abandon elections.⁶ I argue instead that elections – however they are conducted – are an insufficient instrument of democratic accountability, democratic outcomes and democratic processes. Elections are often a necessary aggregative step in the process of decision making but democracy is diminished – and the values of voter participation compromised – when both are reduced to a discrete set of 'choice' points. The goals (in terms of its legitimacy, outcomes and process) of representative democracy are not served when we define citizens' participation primarily by the capacity of the electorate to vote.⁷

The ambition of this essay is to begin to conceptualize alternative forms of citizen mobilization – outside of elections – that have the potential to remake elections into more effective mechanisms of democratic accountability. I use the term 'collective efficacy' as a heuristic device to focus attention and draw lessons from four historic and contemporary examples of such citizen participation – before and after elections. Collectively efficacious citizens are not merely private or civic associations of like-minded people, nor are they simply civic watchdogs. Instead, they build new forms of citizen power, collectively creating what Iris Marion Young calls 'political associations' that 'raise questions about how society should be organized and what actions should be taken to address problems or do justice.'⁸ Where they succeed, it is often because representatives function as

6 Nor do I suggest that it is the number of elections that are the problem. The argument – that it is the proliferation of elections for too many kinds of offices – is often made in the US to explain exceptionally low levels of voter turnout and increasingly high levels of voter disengagement. The US is either last or next to last in terms of the percentage of eligible citizens who routinely participate in the electoral process. S. Issacharoff, P. S. Karlan and R. H. Pildes, *The Law of Democracy: Legal Structure of the Political Process* (Westbury, NY: Foundation Press, 3rd ed, 2007) 88–89. The United States – where most Americans don't vote – 'has more elections for more levels of government with more elective offices at each level than any other country in the world' *ibid* 89.

7 See J. Mansbridge, 'Rethinking Representation' (2003) 97 *American Political Science Review* 515.

8 I. M. Young, 'State, Civil Society, and Social Justice' in I. Shapiro and C. Hacker-Cordon (eds), *Democracy's Value* (Cambridge: Cambridge UP, 1999) 141, 147–148 (distinguishing between private, civic and political association as discrete though potentially linked levels of associational activity).

catalysts for citizen involvement, not just intermediaries or surrogates for citizen views.⁹ In these instances, citizens and their representatives work together to change the metric of success from winning elections to building the kind of collective intelligence and collective power that provides more robust sources of democratic accountability and legitimacy.

Collective efficacy starts from the premise that citizens can become more than mere denominators for those who stand in a legally defined relationship to the state and who, as a result, can vote. Although the term citizen technically refers to someone who is a 'member' of a political community, here citizenship becomes an activity, not just an identity. But while that activity extends beyond the casting of a ballot, at the same time, citizen mobilization enhances electoral accountability rather than displacing it.

Collectively efficacious citizens – those who mobilize to influence or reform government policies and practices – have the potential to transform electoral politics by transforming the way elected representatives perform their roles. Although collective efficacy emphasizes the importance of mobilized citizens to democracy, it is not presented either as a substitute for elections or as a full-blown, stand-alone theory of democracy. My goal is to initiate – through example – a re-imagining of what it means for the people – through their representatives – to have a voice in the decisions that affect their lives.

This essay proceeds in Four Parts. The first part describes the US electocracy and situates it within the history of British/American practices of representation. Part II problematizes electocracy, because it defines the representational relationship with constituents through a static, sanctified and isolated moment of choice. The second part specifically identifies the important role that winner-take-all single member districts (WTA SMDS) play in reinforcing the status of representatives as powerful strangers who are tempted to view their seats as their representational property. WTA SMDS privilege the act of choosing rather than the process of deliberating, deciding, mobilizing, or changing one's mind. The third part suggests two intermediary positions that begin to move the debate beyond the candidate-centered electocratic preoccupation of both the left and the right. The fourth part then explores examples of 'collective efficacy' as an alternative metric of democratic accountability, where mobilized citizens hold their representatives accountable to a political or public agenda. As these examples show, collective efficacy shifts the metrics of success from the quality of (representative) services to the quality of (representative/citizen) relationships and facilitates the development of citizens who actively help to make, rather than who merely consume, democracy.

OUR ELECTOCRACY

The traditional account of constitutional democracy in the United States is that elections are the primary means by which citizens participate in the act of

⁹ Cf S. Sturm, 'The Architecture of Inclusion: Advancing Workplace Equity in Higher Education' (2006) 29 Harv J Law & Gender 247 (describing role of organizational catalysts).

self-government.¹⁰ Through elections, citizens are assured a chance to exercise their 'sovereign' power by holding their representatives democratically accountable.¹¹ However, the history of representation in early modern England reminds us that the use of representation in a government system can be entirely independent of any idea of democracy.¹² It is true that extension of suffrage over the last few centuries generated important independence of mind about, and more energetic attention to, the role of citizens in elections. Yet, the 'ancient and honourable tradition' of people getting to choose their leaders, a tradition that unites both the US and Britain, is a tradition that was forged in the imagination of the already powerful.

Americans borrowed and then adapted their understanding of representation from the English, where the king originally enlisted 'representatives' to enforce his dictates throughout his kingdom.¹³ The earliest representatives in England were comprised of the 'best' men, who were required by royal ordinance to attend the local courts. These men were not elected in any modern sense of the word, but rather held this title through local hereditary aristocracy.¹⁴ Representation in the English Parliament during the middle ages was characterized by a complete absence of specific instructions from constituencies to their members.¹⁵ Representatives were used in order to demonstrate consent, which consisted of listening to what the king required, agreeing to it, and thereby committing the whole of the community represented to the agreement.¹⁶ These representatives played a small part in the proceedings once summoned, primarily to give constructive consent to the king's decrees by relaying the information back to the counties.¹⁷ The primary purpose of representation was not to represent individual rights or interests but to obligate the community to taxation.¹⁸ Once the 'representatives' consented to the taxes, the taxes had to be paid, as the representatives' consent bound their constituencies.

Elections, as they evolved, became an opportunity for the people to participate in the act of self-government. But elections were also a means to ratify 'social and political hierarchies' by focusing on 'personal qualities' not political issues.¹⁹ For many of the framers of the US Constitution, for example, voting had a social

10 '[M]ost citizens can achieve [full and effective] participation only as qualified voters through the election of legislators to represent them . . .' *Reynolds v Sims* 377 US 533, 565 (1964).

11 *Board of Estimate v Morris* 489 US 688, 693 (1989) (quoting Daniel Webster: 'the right to choose a representative is every man's portion of sovereign power'). See also D. Plotke, 'Representation is Democracy' (1997) 4 *Constellations* 19.

12 The early development of the English Parliament 'was influenced hardly at all by theories of representation'. A. H. Birch, *Representation* (New York: Praeger, 1971) 27.

13 Birch, *ibid.*

14 See Pollard, n 4 above at 153.

15 *ibid* 152–153.

16 R. Wickson, *The Community of the Realm in Thirteenth Century England* (London: Longman, 1970) 71.

17 See generally G. L. Haskins, *The Growth of English Representative Government* (New York: Barnes, 1960) 1–20.

18 Pollard n 4 above at 155. The beginning of representation in England seems linked to the development of a national taxation system. When the king began a national taxation scheme rather than gathering taxes through barons, it became more efficient to summon 'representatives' of the various lands to collect the taxes. See J. E. A. Jolliffe, *The Constitutional History of Medieval England: From the English Settlement to 1485* (London: Black, 1937) 308–312.

19 Issacharoff et al., n 6 above at 9.

meaning as a 'ritual of acclamation, a public act that recognizes (and reconstitutes) the superior status of the candidate.'²⁰

Indeed, James Madison, one of the revered authors of the American Constitution, thought that those who were elected to exercise executive and legislative power should ideally be drawn from America's home grown nobility – men of property and position. Madison embraced elections as the preferred means of identifying the select few, but elections were nevertheless an opportunity to ratify the new nation's 'natural' aristocracy. Indeed, it was Madison's hope that the new federal government 'might restore some aspect of monarchy that had been lost in the Revolution.'²¹ If the 'noblest characters' were to come to power, the new national government could rise to the heights of the British monarch, playing a 'suprapolitical neutral role.'²² It was the character and personality of the elected representatives that should become the touchstone of democracy.

For the most part, citizen participation in the young democracy was reduced to the act of choosing leaders. In *Federalist* 63, Madison wrote that one of the most advantageous aspects of the new American government was its 'total exclusion of the people in their collective capacity'.²³ Elections were necessary to obtain the initial consent of the people to be governed, but thereafter citizen participation was not desirable.²⁴ Rule by elections was a crucial element in the young democracy, but elections functioned to protect the operational equivalent of rule by elite. Only those with the most wisdom and the most virtue should hold office, and the people, having elected officials, should defer to them.²⁵

The contemporary incentive structure of the American electocracy reinforces the historical patterns. A sense of disconnect between the act of voting and the

20 D. Herzog, *Happy Slaves: A Critique of Consent Theory* (Chicago: University of Chicago Press, 1989) 197. See also R. H. Wiebe, *Self-rule: A Cultural History of American Democracy* (Chicago: University of Chicago Press, 1965) 29; B. Manin, *The Principles of Representative Government* (Cambridge: Cambridge UP, 1997) 121.

21 Issacharoff et al., n 6 above, Rev. 2nd Ed at 17–19 (quoting Gordon S. Wood, 'the leading historian of this period').

22 G. S. Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992) 255.

23 *Federalist* no 63. '[T]he danger of oppression', according to Madison, exists where citizens collectively use the government as their instrument. Letter from James Madison to Thomas Jefferson (17 Oct 1788), in R. A. Rutland et al (eds), *The Papers of James Madison: Vol 11* (Charlottesville: University Press of Virginia, 1977) 295, 298.

24 Not all the Founders shared these views. The Anti-Federalists opposed ratification of the Constitution. They argued against a small group of men of wealth smuggling a 'masked aristocracy' into the government 'under the suspicious garb of republicanism.' Centinel, *AntiFederalist* no 40. To the extent the structure of national elections meant that only men of means could get elected, the Congress would embody 'the soul of aristocracy', and the 'middle and lower classes' who formed "the democracy" of the American people would not be present' in the legislature. Letter IX of the Federal Farmer (4 Jan 1788), reprinted in H. Storing (ed), *The Complete Anti-Federalist: Vol 2* (Chicago: University of Chicago Press, 1981) 275–281. See also Issacharoff et al, n 6 above at 1187.

25 The Federalists 'all agreed that representatives should not be like their constituents. Whether the difference was expressed in terms of wisdom, virtue, talents, or sheer wealth, and property, they all expected and wished the elected to stand higher than those who elected them.' Manin, n 20 above at 121. In early Puritan society, John Winthrop articulated a similar form of character-driven representation, which he called 'mixt Aristocracie.' Winthrop believed that the people essentially lost power to change laws once they deputized that authority to others. See B. Katherine Brown, 'The Concept of Aristocracy' in M. G. Kammen (ed), *Politics and Society in Colonial America: Democracy or Deference?* (Huntington, NY: Krieger, 2nd ed, 1978) 13, 16.

experience of being represented links back to the idea that representatives in the early English Parliament bound their constituents rather than the reverse. And to the extent that elections of representatives in the US were originally intended to ratify a 'natural aristocracy', that association between representation and membership in a privileged class continues. Many politicians today are consumed not only by attempts to secure reelection but also by the desire to increase their social status during and after their term in office.²⁶ Moreover, as was true of the representatives in the early English Parliament, the key relationships for today's politicians are primarily with other insiders rather than with voters. Informal (or what I shall call 'horizontal') relationships with financial backers supersede formal (or what I shall call 'vertical') relationships with constituents.²⁷ On the informal level, politicians, campaign funders, and lobbyists trade power through ongoing relationships, not static choice points.²⁸ At the same time, the demands of modern campaigns encourage many politicians to demobilize, not just ignore, potential voters.²⁹

Feeling left out, constituents harbor deep distrust of the political system. Almost half of the respondents, and over 60 per cent of black respondents, in a national poll were very concerned that their votes might not even be counted.³⁰ Cynicism about politics now extends beyond the 'institution' of politics to citizens' own representatives. Between 34 per cent and 55 per cent of voters believe

26 See eg, D. Kirkpatrick, 'Democrats Find Ethics Overhaul Elusive in House' *New York Times* 23 May 2007; D. Dagan, *All too Often, Legislators' Private Interests are Hidden from Public View* (Washington, DC: Center for Public Integrity, 2004) available at <http://www.publicintegrity.org/oi/report.aspx?aid=377> (visited 20 Sept 2007). In 2004, Alaska Representative Don Young used his position to get over \$2 billion for two 'bridges to nowhere.' T. Egan, 'Built with Steel, Perhaps, but Greased with Pork' *New York Times* 10 April 2004, A1. The bridges were proposed to be some of the biggest in the country, but they would only connect towns with 'dwindling population[s] and virtually nowhere to drive to', so the main purpose of the bridges would be to serve as a 'symbol of power' for the Representative. *ibid.* Or as former Senator Warren Rudman explains: 'All of a sudden, [members of Congress] start rubbing elbows with the mega-rich . . . I think some people get exposed to that and say, I want to have at least some of that'. See P. Stone, 'The Abramoff Wave' *National Journal* 11 August 2007 (internal quotation marks omitted).

27 I use the term 'horizontal relationships' to suggest interactions between peers, people of relatively equal status who influence or coordinate with each other (often informally). 'Vertical relationships' tend to be more regulated, ritualized or calibrated to accommodate the unequal status between citizens and those with formal power, expertise or authority.

28 The number of Washington-registered lobbyists is now over 26,000, a number more than double the number of registered lobbyists in the preceding ten years. P. Katel, 'Lobbying Boom: Should the Influence Industry be Regulated More Closely?' (2005) 15 C Q Researcher 613, 613. In 2006, lobbyists received an unprecedented \$2 billion from their clients to influence Congress. *ibid.*

29 Politicians and parties often employ a strategy of disorienting the public and demobilizing voters through negative campaign ads, with both Democratic and Republican campaign committees spending six to eight times more money to attack their opponents than they did to support their own candidates. C. Rodriguez, 'Meet the 7th Congressional District Who let the Dogs Out to Get out the Vote?' *Denver Post* 5 November 2006, L3. Community members have few opportunities for effective participation because the main purpose of political parties has changed from mobilizing voters to raising money; politicians 'have more incentive to raise money . . . than they do to mobilize voters in their own districts.' Weir and Ganz, n 5 above at 157.

30 D. A. Bositis, *2004 National Opinion Poll: Politics and the 2004 Election* (Washington, DC: Joint Center for Political and Economic Studies, 2004).

their member of Congress is taking bribes.³¹ In a recent survey, 71 per cent of Americans now say their own representatives put partisan politics ahead of the interests of their constituents; 63 per cent *strongly* held such a view.³² According to one member of the bipartisan group who conducted the poll, the condition of politics as practiced today in the US at least 'is highly unstable'.³³ And if this skepticism is true for Americans in general, it is especially true for African Americans. In a survey conducted in April 2007 of 700 blacks in South Carolina, 77 per cent of those surveyed thought that Washington's political process was 'seriously broken' and 69 per cent of those surveyed thought that the US is headed in the wrong direction.³⁴

The infusion of money and the disappearing role of citizens have created what George Soros calls 'an agency problem'.³⁵ Elected officials have become the agents of funders, lobbyists and their own self-interest.³⁶ Or as Celinda Lake, a Democratic pollster, warned, representatives are having trouble straddling two competing worlds: the world of the voters and the world of the insiders.³⁷

Baroness Whitaker's argument that members of the House of Lords should all be elected rested, in part, on the claim that there is an 'ancient and honourable' tradition of people getting to choose their legislators. Her argument also assumed that elections create relationships of accountability between representatives and their constituents. Her assumptions are widely shared among small 'd' democrats. But the original role of representation in England and in the early American republic suggests that there is another set of longstanding though much less visible traditions. Like the early English representatives in Parliament or the ideal leader as imagined by James Madison, the 'best' men or 'noblest characters' were expected to inhabit different worlds, and be accountable to different interests, than those of the voters. Arguably then, there is an intimate and historic association between aristocracy and representative democracy, an association that is hard-wired into many aspects of contemporary electocracy in the United States.

31 M. Dimock, *Independents Sour on Incumbents: Many Say Their Member has Taken Bribes* (Washington, DC: Pew Research Center for People and the Press, 2006).

32 D. Balz, 'Survey: Americans Have Cynical Views of Politics' *Washington Post* 28 July 2007. This result is especially striking because public skepticism now extends to individuals' own member of Congress. Historically, Americans made an exception for their own representative.

33 Balz, *ibid*, quoting Celinda Lake. 71 per cent of respondents do not trust the government to do what was right for the country. A. Nagourney and J. Elder, 'Only 25 per cent in Poll Voice Approval of the Congress' *New York Times* 21 Sept 2006, A1. Support for the US federal government was under 30 per cent. R. L. Cole and J. Kincaid, 'Public Opinion on Federal and Intergovernmental Issues in 2006: Continuity and Change' (2006) 36 *J Federalism* 443, 447.

34 *African-American Voters in South Carolina are Dissatisfied with Politics as Usual and Want Presidential Candidates to Address the War, Health Care, and Economic Issues* (Washington, DC: American Association of Retired Persons and Joint Center for Political and Economic Studies, 2007).

35 George Soros, comments at *Democracy and the Future*, 10 April 2007 Symposium Dinner.

36 In ten states, more than 40 per cent of the legislators sat on a committee that had authority over at least one of their personal interests. Dagan, n 26 above. This makes it easy to forget your constituents. As former Senator Rudman acknowledges: 'You get a lot of high-powered people who come to see you on legislation they want'. Stone, n 26 above.

37 Balz, n 32 above.

REPRESENTATION AS THE PROPERTY OF POWERFUL STRANGERS

In an electocracy, the people presumably participate in government by selecting others to make decisions on their behalf. Those selected represent their constituents' interests by performing one or more possible roles. They may undertake to serve as a Trustee (who acts on behalf of the greater good by deliberating with other legislators but ultimately consulting her own conscience). Or they may function as a Delegate (who carries forward faithfully the mandate of the voters). Alternatively they see themselves as a Descriptive Mirror (who reflects the social characteristics of their constituents).³⁸ The descriptive idea of the representative may be the most controversial.³⁹ But all of these roles assume that constituents' interests are fairly static; that the representative can or should act individually to figure out what those interests are; that providing personal constituency service suffices as a means of consulting or engaging constituents.⁴⁰

None of these roles offers much resistance to the pressures of, and the opportunities provided by, 'insider politics.' Nor do these conventional ideas of the representational role anticipate the need for representatives to work closely with mobilized groups of citizens who function as ongoing constituencies of accountability outside of the structure of electoral focused activity. None of these roles creates the opportunity or builds in the incentives for the representative to engage directly and interactively with groups of citizens about what they value and how they might assist the representative in enabling those values to be realized.

Instead, these conventional approaches to representation assume that the role of the representative flows directly from the fact of being elected. Depending on post-election institutional incentives, the elected official can and should act unilaterally to translate the results of the election into a role. While the discipline provided by the need to face the voters again in two, four or six years ostensibly constrains the representative's interpretation of her role,⁴¹ elections also transfer power from the people to their representatives. This transfer of power contributes to a sense of entitlement among incumbent officials and loosens the ties between the people and their government. The citizen, as Tocqueville observed, begins to look 'upon all these things as unconnected with himself.'

38 But cf K. Tate, *Black Faces in the Mirror: African Americans and their Representatives in the U. S. Congress* (Princeton: Princeton UP, 2003) (political representation consists of three forms: substantive, descriptive, and symbolic).

39 Cf H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967) 90 ('A man can only be held to account for what he has done, not for what he is; so at most a descriptive representative might be held to account for whether he has given accurate information about the constituents'). See also *Shaw v Reno* 509 US 630 (1993) (creating districts with a consciousness of the racial identity of their constituents may constitute an 'expressive' harm; meaning it sends the representative the message that she only needs to represent voters with the same racial identity).

40 Tate, above n 38, argues, for example, that the incentive system in the US Congress encourages members to rely on descriptive characteristics as well as symbolic acts to signal that their relationship is ongoing with their constituents. In addition, many representatives maintain district offices to ensure personal service to their constituents, what Richard Fenno calls 'home-style' representation. R. F. Fenno, *Home Style: House Members in Their Districts* (New York: Longman, 2002).

41 It is not the election but the re-election that presumably provides democratic accountability. See B. Ackerman, 'Meritocracy v Democracy' *London Review of Books* 8 March 2007.

Representation may be viewed as a public status associated with winning in a public competition, yet the terms of that status are fixed before the voters even go to the polls. Although the moment of choice is sanctified as occurring during the election, it actually takes place much earlier during the map-making process that defines election district boundaries.⁴² And the real moment of choice occurs without the involvement of the voters. Well before the formal day set aside for citizens to vote, elected officials become entangled with the mechanics of partisanship redistricting. Controlled by self-interested partisans, districting triggers a set of horizontal relationships involving technicians and politicians who manipulate election district lines ostensibly to comport with the US Supreme Court's equal population principles – that election districts should contain equal numbers of people.⁴³ Representatives use this process to choose their voters, and they do so based on assumptions about the voters' identities. Emboldened by a practice that takes place mostly behind closed doors, incumbent politicians herd voters into artificial political units and tether both voters and representatives to an identity – whether as Democrats or Republicans, evangelical Christians or pro-choice feminists—that enable those in power to retain political control. By drawing district boundaries, incumbent politicians predetermine election outcomes well before any voter casts a ballot.

The fact of geographic districts combines with the act of districting to produce a constitutionally sanctioned process that protects incumbents.⁴⁴ Self-interested incumbents recast single-member winner-take-all districts as an electoral estate that they define, control and protect. Like the *powerful strangers* Tocqueville decried, political incumbents learn to treat their districts – and the voters within them – as a form of 'representational property'. Further it is assumed that the current officeholder – especially once in office for a few terms – has a future entitlement to this position. In essence the representatives, like their historical antecedents in the early English Parliament, bind their constituents, rather than the reverse.

Whether Descriptive (mirror), Delegate (mandate) or Trustee (wise and virtuous), whether elected unanimously or by bare majority, the individual representative stands in for the whole and makes decisions on behalf of all constituents, even those who did not vote for her. Because the outcome is winner-takes-all, whoever receives 51 per cent of the votes gets to represent the entire district including those

42 Districting is essentially the process of deciding whose votes to waste, i.e., which votes should be made superfluous or irrelevant. See L. Guinier, *The Tyranny of the Majority* (New York: Free Press, 1994) 133–137.

43 *Reynolds v Sims* 377 US 533 (1964); *Baker v Carr* 369 US 186 (1962). This is popularly referred to as the 'one person/one vote' rule.

44 *Vieth v Jubelirer* 541 US 267 (2004) (Kennedy J. concurring in the judgment) (even when the Court has 'the sense that legislative restraint was abandoned', or that incumbents are 'in the business of rigging elections' political gerrymandering is nonjusticiable); *Karcher v Daggett* 462 US 725 (1983) (avoiding contests between incumbent representatives is a legitimate state policy); *Lucas v Colorado* 377 US 713 (1964) (Stewart J. dissenting) (Court does not question constitutional validity of geographic districting). But cf *League of United Latin American Citizens v Perry* 126 S. Ct. 2594 (2006) (*LULAC v Perry*) (incumbency protection may be problematic where the district lines are obviously changed simply to benefit the officeholder, not the voters); *Larios v Cox* 300 F. Supp. 2d 1320 (N.D. Ga.) (three-judge court), summarily affirmed at 542 US 947 (2004) (applied in a 'consistent' and 'neutral' manner, incumbency protection is legitimate state policy).

who voted against the winner. 49 per cent of the voters are ‘virtually’ represented, meaning the representative is an agent of ‘the’ district; he or she presumably serves all of its citizens. Virtual representation means the elected official is also an agent of citizens who voted against her, ie did not support or ‘consent’ to her representation of their interests.⁴⁵ Representatives ‘represent’ all those who live in the district ‘as if’ all those in the district had in fact supported her election.⁴⁶ At the same time, a losing minority in one district is often deemed represented virtually by choices made by members of that minority in another district in which they are the numerical majority. The elected representative, in other words, is presumed to represent those who voted against her as well as those who supported her. She also arguably represents those who would have voted for her had they been able to vote. As a result, the representative is both an ‘agent’ of the district’s identity and its arbiter.

For example, after the congressional delegation from Texas had already been redistricted following the 2000 census, Republicans, who were a majority in the Texas state legislature, decided to take advantage of their political clout to redistrict yet again to increase Republican control over more of the seats for members of the Texas delegation to the US Congress. Their plan, which treated the congressional districts as the representational property of the Republican Party, was adopted by the Texas legislature on a party line vote. The Democratic Party filed a legal challenge to this mid-decade redistricting effort in Texas. In *LULAC v Perry*,⁴⁷ the United States Supreme Court found no constitutional infirmity in the way the Republican majority in the Texas state legislature redesigned congressional districts mid-decade for purely partisan reasons. A political land-grab – that seized power from the Democrats but also from the voters – did not present a constitutional question.

The case, however, also raised a statutory question: whether the State of Texas violated Section 2 of the Voting Rights Act of 1965 (as amended in 1982 to protect the right of members of a ‘protected class’ to enjoy the same opportunity as other members of the electorate to participate in the political process and ‘to elect representatives of their choice’). Here the Court did find a violation. As part of their

45 The idea of virtual representation is used to create the fiction that voters whose candidates lose are nevertheless represented. First, the voter is presumed to be represented when her district is represented. This is the Burkean notion that it is the district, not its residents, who are represented. Second, the voter is represented by the majority who actually selected the representative because of the reciprocity principle and the Golden Rule – the majority will be constrained from ignoring the minority because the majority is not assured of its permanent status. Third, the voter is represented by choices made by other voters who share her interests and who are a majority in some other district. For a discussion of the theory of virtual representation, see Guinier, n 42 above, at 130–134.

46 Ironically, the doctrine of ‘one person/one vote’ in the US furthers the idea of virtual representation because it is a population based rule that all elected officials should have the same number of persons within each of their districts. It is an equal population principle that works in tandem with the virtual representation idea. A child, a disenfranchised felon or a person who is mentally incompetent has no right to vote but is simply presumed to be represented by those who do vote. Nevertheless, their presence in the district is counted for the purposes of establishing political equality in terms of ‘one person/one vote.’ See L. Guinier and G. Torres, *The Miner’s Canary* (Cambridge, Mass: Harvard UP, 2002) 179–182.

47 *LULAC v Perry* n 44 above.

mid-decade redistricting, the Republican-dominated Texas legislature redrew the district lines in Congressional District 23 to protect Henry Bonilla, an endangered Latino Congressman. They dismantled District 23 just as Latinos were mobilizing to express their dissatisfaction with Bonilla, the Republican incumbent. Bonilla, whose core voting base was Anglo Republican, received less than eight per cent of the Latino vote in the previous election.

Latinos were a citizen voting age majority in the district. Dissatisfied, they were poised to oust Bonilla, who had no relationship with them, and little understanding of the issues that were important to them.⁴⁸ To protect Bonilla against the burgeoning activism of his Latino constituents, Republicans split Laredo County, siphoning off 100,000 Latinos (who were roughly 87 per cent Democratic) from Congressional District 23. Not only did Republicans subvert the growing political clout of a Latino District majority, but they also created a mammoth district, whose size alone would make it difficult to represent. The new District 23 was larger than any state east of the Mississippi River and spanned two time zones. After removing almost one quarter of the Latinos from the existing District 23, the mapmakers replaced them with heavily Anglo and Republican voters.⁴⁹ The district still had a majority Latino voting age population, but no longer had a *citizen* voting age population majority.

To compensate for the dismantling of District 23, and to avoid liability for diluting the voting strength of Latinos under the Voting Rights Act, Republicans drew District 25 as an 'offset' district. The mapmakers added more Latinos to this newly redrawn District 25, which came to be called the 'bacon strip' district because it used a thin strip of land to link 'colonias' in Hidalgo County with suburban areas in central Texas. Latinos with distinct social and economic interests in the small Mexican border cities were lumped with Latinos in cosmopolitan Austin, the state capitol, 300 miles away.

The Court majority found a violation of the Voting Rights Act in the legislative 'trade' between Districts 23 and 25. Four Justices, including Chief Justice Roberts, a conservative judge appointed by President George W. Bush, dissented. At oral argument in March 2006, Justice Roberts, who saw no justiciable claim on constitutional grounds, seemed equally skeptical that the statute was violated as a result of the Republican voting rights 'swap meet'. Justice Roberts pointedly asked the attorney representing the Latino appellants (LULAC), what relevant difference there was between 'being one' (a majority Latino district where the representative was accountable to a mobilized group of Latino voters) and 'looking like one' (a district with a Latino population that was represented by a Latino for whom Latinos in the district did not vote).⁵⁰ Many commentators interpreted Justice Roberts' question – and his subsequent dissenting opinion – as an openly dismissive approach to what I am calling the representational property problem. Bonilla was, after all, the incumbent. Latinos were still technically a majority of

48 See Congressman Henry Bonilla, 'About Henry', at <http://bonilla.house.gov/Default.aspx?section=about&page=about> (visited 20 Sept 2007).

49 See *Jackson v Perry* 125 S. Ct. 351 (2004) (jurisdictional statement for the plaintiffs).

50 L. Greenhouse, 'Justices Express Concern over Some Aspects of Texas Redistricting' *New York Times* 12 March 2006.

the people in the district. Even though 92 per cent of the Latinos in his district voted against him, Representative Bonilla *virtually* represented *all* voters in his district.

In this reading by the conservative dissenters, the Court was not in a position to decide whether Bonilla represented the interests of the people who live in his district. It is 'the district' qua district – not its residents – that is being represented. It is the prerogatives of those 'powerful strangers' drawing the districts – not those living in them – to which the Court should defer.

In his splendid case study of black mayors, especially the one term served by New York City Mayor David Dinkins, political scientist James Phillip Thompson teases out a similar deference dynamic, but from the left rather than the right. Here, too, incumbent politicians (in this case Democrats) viewed their districts as their representational property.⁵¹ The local council members bound their constituents: the constituents did not bind their elected representative.

Dinkins, a Democrat, was the first black mayor of New York City. Once elected, he misread the depth of his support among black city council members, who were also Democrats. Like most politicians, Dinkins sought election based on personal qualities, including his commitment as a black man to the plight of poor blacks and Latinos throughout the city. But he failed to organize a citywide constituency with a clear agenda to guide him as well as his supporters after his election. This left even his most ardent supporters substantively ill informed and disconnected from each other after the election. Black civic organizations were inexperienced and unprepared 'to play a major role in policy battles in the years in-between elections'; Dinkins was also weakened by his own inability to establish an alternative political coalition to provide support for the mayor when opponents assailed his administration.⁵² Moreover, many community residents thought the election of a black mayor relieved them of responsibility for acting for themselves. Thompson quotes Earl Shiholster, former NAACP Southern Director, on the limitations of using a static kind of descriptive representation as the primary focus of an empowerment strategy: 'once we elected somebody, [community residents] stopped going [to civic meetings]'.⁵³ Because a constituency of accountability was never mobilized, even Dinkins' most faithful supporters were unable to protect him when he was attacked after the election. Dinkins became increasingly vulnerable in the face of criticism from wealthy opponents, tabloid journalists, and those who had not supported him in the first place.

Thompson describes a beleaguered Mayor Dinkins, who thought that he could count on black members of the city council for support, since most of their constituents were poor, black or both and Dinkins' budget proposals were designed to assist working men and women and the poor, especially poor blacks and Latinos.⁵⁴ Dinkins had assumed that black city council members would collaborate with the city's first black mayor – for the benefit of their common

51 J. P. Thompson, *Double Trouble: Black Mayors, Black Communities, and the Call for a Deep Democracy* (New York: Oxford UP, 2006).

52 *ibid* 158, 211, 251–254.

53 *ibid* 98.

54 *ibid* 209.

constituents and for reasons of racial identity. He discovered that the fact that citizens may look like their elected officials does not alone mean that the elected officials all share the same political goals.⁵⁵ Instead, their shared racial identities (as descriptive representatives) provided a screen behind which some black city council members chose to bargain for patronage plums at the expense of policy advocacy on behalf of their poorest constituents.

What Mayor Dinkins did not anticipate is that several black members of the city council took a proprietary view of their positions. They were not selfless public servants. They systematically demobilized potential dissenters in their districts. According to Thompson, many opted to rule their districts as fiefdoms, requiring the equivalent of passports to assure 'safe passage' for other politicians who wanted to visit their 'territory'.⁵⁶ For Dinkins, this meant they were unreliable allies, trading their votes for the 'lulus' (committee assignments and modest salary increases) offered by the City Council President. Because they represented politically safe districts, these career-minded politicians 'don't have to deliver very much', said Bill Lynch, one of Dinkins' key aides. 'They just [can't] piss anybody off, and they can get reelected forever'.⁵⁷

In the Texas legislature and the New York City Council, self-dealing politicians on both sides of the aisle took a proprietary interest in the districts they represent, an interest that is manifest when they draw the district lines or when they substitute patronage plums for policy advocacy. These governing units may thus reproduce the conditions Tocqueville associated with mid-nineteenth century European villages. Winner-take-all districts can foster a passive citizenry which defers to its elected officials and ultimately distances itself from its government, a government that is viewed as 'the property of a powerful stranger'. Even when more black or Latino politicians get elected, they too need an organized or mobilized constituency to hold them accountable after the election. What was missing in both Texas and New York City were institutional structures to support and encourage constituencies of accountability – groups of citizens mobilized both to hold elected officials accountable to a shared (though not necessarily fixed) agenda and to protect those officials if they are attacked for promoting that agenda.

THE VALUE OF PARTICIPATION – AN INTERMEDIATE SOLUTION

I now return to the US Supreme Court's majority opinion in *LULAC v Perry*,⁵⁸ because Justice Kennedy, writing for the Court, finds a violation of the Voting

55 The relationship between constituent and representative may fall short of the constituent's expectations when the similarity involved does not expand beyond racial identification. See C. Gay, 'Spirals of Trust? The Effect of Descriptive Representation on the Relationship between Citizens and Their Government' (2002) 46 Am J Pol Sci 717. But Gay also found that the racial similarity between the individual elected officials and the individual constituency member 'may speak volumes about [the elected official's] priorities and accessibility, factors that can influence the member-constituent relationship and can endear an individual legislator to her constituents'. *ibid* 731.

56 Thompson, n 51 above, 209–211.

57 *ibid* 210–211.

58 n 44 above.

Rights Act in a way that focuses on the mobilization of the citizenry not just the outcome of the election. I also describe Cory Booker's efforts as the recently elected Mayor of Newark, New Jersey to engage his constituents, making himself available through 'office hours' in a local school in order to involve citizens in their own government.⁵⁹ Booker, who is black, is experimenting with the template of 'affable neighbor' (known by his outreach to his constituents not just by his race) rather than 'powerful stranger.'

In *LULAC*, Justice Kennedy found a violation of Section 2 of the Voting Rights Act when the Republican controlled Texas legislature used mid-decade redistricting to protect Henry Bonilla, the Republican incumbent in District 23 who faced an increasingly tough re-election in 2006 in light of mushrooming political activism among Latinos. Justice Kennedy's focus in *LULAC*, however, is not on the election outcome per se. Instead he emphasizes the fact that Latinos in District 23 were 'a racial group that was subject to voting related discrimination and was becoming increasingly politically active and cohesive'. Kennedy emphasizes that the redistricting took place at the moment Latinos in the area were becoming more 'politically active, with a marked and continuous rise in Spanish-surnamed voter registration'. Latino 'voters were poised to elect their candidate of choice,' and the State 'made fruitless the Latinos' mobilization efforts'. What was important to Justice Kennedy is that Latinos in District 23 'had found an efficacious political identity'.⁶⁰

Justice Kennedy saw value in preserving District 23, but not simply to protect an ethnic group qua ethnic group. What the Court should protect, under the Voting Rights Act, is District 23's political potential as reflected in the high levels of Latino mobilization.⁶¹ Such political energy was not yet in evidence among Latinos in District 25 (the 'bacon-strip' district that was drawn as part of the state's effort to compensate for dismantling District 23).⁶² Kennedy's opinion found that '[t]he practical consequences of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals'.⁶³ Kennedy concluded that the state attempted to 'trade off' the rights to participate and mobilize of 'some minority voters under Section 2 against the

59 See A. Jacobs, 'Through Mayor's Open Doors, Many Problems, Not All Solved' *New York Times*, 8 March 2007.

60 *LULAC* n 44 above at 2621, 2622 and 2623. Ellen Katz interprets Justice Kennedy's emphasis on the facts that Latino voters in District 23 were 'cohesive,' and 'politically active' as a commitment to competitive election districts. E. Katz, 'From Laredo to Fort Worth: Race, Politics, and the Texas Redistricting Case' (2006) 105 Mich L Rev 38.

61 Gerald Torres and I have termed this 'political race', where members of racialized minority groups act politically rather than simply identifying individually. Political race suggests that those who mobilize based on shared interests not just shared ancestry experience a sense of solidarity and efficacy, especially if they articulate their interests to build coalitions around structural changes that also benefit others. See Guinier and Torres, n 46 above.

62 In other words, the State argued that the adverse effect on Latino voting strength in District 23 was cured when the State created another majority Latino District, District 25, in a different part of the state. Although Latinos in the old District 23 no longer had the numerical voting strength to 'elect' a representative of their choice, a representative chosen by a Latino majority in the newly constructed District 25 *virtually* represents them in the Texas congressional delegation.

63 *LULAC* n 44 above (Kennedy opinion at 27).

rights of other members of the same minority class.’⁶⁴ Justice Kennedy found the answer to Justice Roberts’ question in an emerging and more participatory dynamic. The difference between ‘being one’ and ‘looking like one’ is the difference between defining a political identity through political activism and defining one’s political identity through visual inspection.

Kennedy’s opinion is significant for my argument, because it gestures toward a form of collective efficacy. Justice Kennedy’s opinion underscores the importance of Latino political activity in District 23 as a way of distinguishing collective political self-expression from identity politics, where racial classifications are externally determined and enforced. In Justice Kennedy’s analysis, the preliminary, albeit hazy, outlines of collective efficacy emerge. Latinos in District 23 were converting their relational social power into political power. They were organizing as Latinos but they were organizing to defeat someone who shared their ethnicity but not their political agenda. The salience of their Latino identity was alone not the issue.⁶⁵ In District 23, mobilized citizens were beginning to remake themselves into a constituency of accountability. They were exercising their political power as citizens with common interests: linked fates, not just linked faces.

Like Justice Kennedy, but from the left, Cory Booker, a rising star in the Democratic Party, is grappling with the distinctive merits of citizen participation. In 2002, Booker, then serving his first term as a member of the city council of Newark, ran for Mayor of Newark, New Jersey, a predominantly black and very poor city in one of the wealthiest states in the US. Booker was a Rhodes Scholar; he had graduated from Stanford University and Yale Law School. Although he grew up in the affluent and predominantly white suburb of Harrington Park, New Jersey, Booker moved to Newark and lived in a crime-ridden housing project prior to making his first run for political office as a city councilor in 1998. Vigorous, charismatic and articulate, Cory Booker is the embodiment of what the founders might have considered a ‘natural’ leader (although on this point it is worth repeating that he is black). He attracted a growing national media following and benefited from a large infusion of campaign contributions from supporters outside of Newark. Nevertheless, the longtime incumbent mayor, Sharpe James, was re-elected in 2002. James ran a vicious campaign that resonated in part because many blacks in Newark were skeptical of Booker’s motives, seeing him as a carpetbagger who relied too much on the advice of outsiders (ie his friends from college and law school, none of whom hail from Newark).⁶⁶ Although Booker ran again and won the mayor’s race in 2006 in a landslide, some Newark residents still saw him as an all-too-powerful stranger.⁶⁷

64 *ibid*, slip opinion at 30 (citing *Johnson v DeGrandy* 512 US 997, 1019 (1994)).

65 Nevertheless, a shared identity can play a powerful role in galvanizing collective action: B. Sachs, ‘Employment Law as Labor Law: Toward a New Model’ (unpublished draft, July 2007, forthcoming *Cardozo L Rev* 2008) at 47–49. At the same time, a belief in the possibility of success is critical: R. Meyer, *The Irony of Power: Efficacy and Collective Action in Working-Class Struggle* (University of Michigan, unpublished PhD dissertation, 2006) 4.

66 See ‘Streetfight’, a low budget documentary about Cory Booker; also A. Jacobs, ‘New Mayor Tests His Promises on Newark’s Reality’ *New York Times* 19 October 2006.

67 A. Jacobs, ‘Newark’s Mayor Battles Old Guard and Rumors’ *New York Times* 3 July 2007.

To deliver on his promise of accessibility and to overcome residents' lingering suspicions that Booker was not really one of them, newly elected Mayor Booker decided to hold office hours throughout the city. Initially held every other week, then once a month, his office hours were open to all comers. Few have had the problems they presented resolved, but all left with a hug and a lollipop:

The mayor said that it would be impossible to fulfill the needs of everyone who comes to see him, and that the point of the sessions was 'not necessarily about solving their problem but helping them [as individuals] recognize their ability to solve their own problem . . . Regardless of results, the mayor said, there is value in listening to people's troubles and giving them words of encouragement.'⁶⁸

Both Justice Kennedy's and Mayor Booker's intermediate positions reflect an increasing awareness of the benefits and significance of citizen participation – beyond just voting in elections.⁶⁹ Those benefits include the idea that people's lives are enriched by the opportunity to participate. Individuals gain a sense of dignity and self-confidence from contributing to the public debate. Moreover, the group that loses is more likely to abide by the outcome and to regard it as legitimate if it believes it had a meaningful voice in the process.⁷⁰ Participation is thus often viewed as a public good. Solidarity is another benefit. A sense of shared fate can lead individuals to join with others to challenge unfairness. New game theory research, for example, suggests that citizens may be more willing to take risks or make commitments to collective activity if they see others doing so.⁷¹ Individuals working together toward political aims strengthen not only their own core political ideas and understandings, but also can help to promote cooperation,⁷² a phenomenon that is more widespread and more voluntary than might be imagined.⁷³ Indeed, an emerging literature on reciprocity suggests that initial cooperation breeds further cooperation.⁷⁴

However, cooperation alone is usually not enough. Political participation involves individuals having a baseline knowledge about the ways in which the political system functions and being able to articulate their political goals.⁷⁵ Participation requires

68 See Jacobs n 66 above. Booker's office estimated it had helped 30 per cent of those who had come to the ten office hours in Booker's first eight months in office.

69 See J. Mansbridge, 'Representation Revisited: Introduction to the Case against Electoral Accountability' (2000) 2 *Democracy and Society* 1, 12–13.

70 M. Walzer, 'Multiculturalism and Individualism' (1994) 41 *Dissent* 185.

71 Contrary to the free rider problem of collective action, the new 'logic of reciprocity' posits that the opportunity to observe others participating may enhance the likelihood of one's own participation. Sachs, n 65 above, 71–72.

72 See F. Poletta, *Freedom is an Endless Meeting: Democracy in American Social Movements* (Chicago: University of Chicago Press, 2002) 56.

73 See E. Fehr U. Fischbacher and S. Gächter, 'Strong Reciprocity, Human Cooperation and the Enforcement of Social Norms' (2002) 13 *Human Nature* 1; H. Gintis, 'Modeling Cooperation among Self-Interested Agents: A Critique' (2004) 33 *Journal of Socio-Economics* 695. But cf R. D. Putnam, 'E Pluribus Unum: Diversity and Community in the Twenty-First Century' 30 *Scandinavian Political Studies* 137 (2007).

74 Over repeated simulations of a prisoner's dilemma game, strong reciprocators can encourage normally selfish actors to cooperate or risk punishment long term. See Fehr et al, *ibid*.

75 See J. Mansbridge, 'Practice-Thought-Practice' in A. Fung and E. O. Wright (eds), *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso, 2003).

investment in education, to enable a broader base of people to be involved in the political system.⁷⁶ Increased citizen involvement may also require the establishment of new governmental institutions such as the regularized system of participatory budgeting in Porto Alegre, to be discussed later, where the well educated work with the barely literate to set priorities for municipal spending. Or it may mean that political discourse will take place outside of traditional places where deliberation occurs.⁷⁷

But, perhaps the most important challenge is the skepticism among elites about citizen capacity and interest in participation.⁷⁸ That skepticism may then harden into resistance to the extent that citizen participation requires elites (ie representatives) to reconfigure their role, even as they reach out and construct new avenues of citizen participation. In this part, therefore, I focus on two more preliminary stages of citizen activity. Especially because a potentially dramatic reshuffling of power relations is at stake, even modest signs of elite openness to citizen participation can be an important bridge to the more institutionalized forms of collective efficacy that I describe in the next part. Arguably, Justice Kennedy and Mayor Booker are helping to construct that bridge.

In this part, I have focused on two rudimentary expressions of citizen activity. Justice Kennedy and Mayor Cory Booker offer the promising but underdeveloped possibility of measuring success by citizen participation rather than election outcomes alone. Booker's style emphasizes the vertical relationship (with its built in asymmetries of power) between the elected official and his constituents post-election. However, because his office hours are conducted one-on-one, they pay little attention to building horizontal ties that connect constituents with shared problems to each other. Nor do office hours provide an institutionalized mechanism for systematically directing local citizen knowledge and energy in ways that inform the policy-making process. They do little to redirect his constituents' suspicions (that he is an outsider with larger political ambitions) around an agenda in which mobilized citizens could play a leadership role. When his staff fails to return subsequent phone calls, those who attend the office hours continue to vent their anger and disappointment at the Mayor. Under the current framework, Newark residents remain dependent upon their Mayor as the savior (a charismatic, even friendly, yet still powerful stranger).

Unlike Cory Booker's office hours, Justice Kennedy's attention to the development of 'political efficacy' among Latino voters in Texas attends to the importance of galvanizing peer relationships (horizontal connections among neighbors,

76 Currently, even where individuals can participate, such as in the administrative notice and comment process, most individual citizens lack the ability to discuss an issue with the sophistication required for a comment to be viewed as one worthy of serious consideration by the administrative agency. See, eg M.-F. Cuellar, 'Rethinking Regulatory Democracy' (2005) 57 Admin L Rev 411. ('laypeople . . . lack the time, energy, inclination or knowledge to say much [that administrators find useful] in the regulatory process').

77 See M. Harris-Lacewell, *Barbershops, Bibles and Bet* (Princeton: Princeton UP, 2004) (explaining how ordinary spaces of 'everyday talk' allow for the development and revision of political ideologies within the black community).

78 A. Fung and E. O. Wright, 'Thinking About Participatory Governance' in *Deepening Democracy*, n 75 above. But cf D. B. Spence and F. Cross, 'A Public Choice Case for the Administrative State' (2000) 89 Geo LJ 97 (arguing that voters are rationally ignorant and have less information than politicians or administrative agency members).

fellow church members and friends) that enable citizen mobilization. Under the right circumstances, the elected representative could become an agent of a broader, deeper vision of democracy. But Justice Kennedy ultimately measures the outcome in electocratic terms.⁷⁹ In both Newark and Texas the representative, whether a fixture or a friend, still faces the danger of remaining a distant stranger not a linked partner.

LINKED FATES, NOT JUST LINKED FACES – THE COLLECTIVE EFFICACY HYPOTHESIS

In this part, I develop the idea of collective efficacy as a measure of collective power. Collective efficacy involves the process of building political capacity from social power.⁸⁰ Such power lies dormant until people convert the networks and ties between neighbors, colleagues or associates into a political force.⁸¹ Collective efficacy is usually triggered by two mutually reinforcing beliefs: that a group has the capacity to act as a group, and that such actions will succeed.

I first learned of the idea of collective efficacy in the public health context. In that arena, a group of researchers invoked the concept of collective efficacy to rebut James Q. Wilson's broken windows hypothesis, which claimed that physical and social disorder in neighborhoods causes or leads to an increase in violent crime.⁸² Outsiders who fixed the windows and painted over the graffiti would serve notice on the community, and its lawbreakers, that the government was enforcing the rules and holding members of the community to high standards. Public health researchers Sampson, Raudenbush and Earls countered the broken windows hypothesis with their own theory: violent crime is higher in neighborhoods with lower levels of collective efficacy.⁸³ They hypothesized that service providers who are summoned by outside forces to fix broken windows and paint over graffiti would be less likely to generate long-term, sustainable change than community members who join forces to identify the problem and determine solutions together. After deploying graduate students with video cameras

79 For example, Kennedy's criticism of District 25, the bacon strip district, relies on testimony that it would be difficult to 'control election outcomes' in District 25 'because of the size and diversity of the newly configured districts.' *LULAC* n 44 above, slip opinion at 28.

80 Social power, which arises from participation in social exchanges, and friend or kinship ties increases mutual trust and shared expectations for collective action in support of a neighborhood. See, eg R. J. Sampson, 'Local Friendship Ties and Community Attachment in Mass Society: A Multi-Level Systemic Model' (1988) 53 *Am Sociological Rev* 766; J. Kasarda and M. Janowitz, 'Community Attachment in Mass Society' (1974) 39 *Am Sociological Rev* 328. At the same time, power becomes a communication medium rather than a fixed status, enabling individuals and groups to question 'the encapsulation of power within a power holder.' See, eg X. Leflaive, 'Organizations as Structures of Domination' (1996) 17 *Organization Studies* 23, 33.

81 I link the term collective efficacy to the definition of power as 'relational' in the organizing literature. See, eg M. Grinthal, 'Power-with' (15 May 2006) (draft on file with author); also Meyer, n 75 above at 4.

82 See G. L. Kelling and J. Q. Wilson, 'Broken Windows: The Police and Neighborhood Safety' (1982) 249 *Atlantic Monthly* 29.

83 R. J. Sampson S. W. Raudenbush and F. Earls, 'Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy' (1977) 277 *Science* 918.

recording neighborhoods in Chicago over an 18 month period, the public health researchers concluded that it is 'the differential ability of neighborhoods to realize the common values of residents and maintain effective social controls' that leads to variability in crime between those neighborhoods.⁸⁴

I borrow and adapt the term *collective efficacy* to begin to conceptualize a new metric of democratic accountability that emphasizes the collective intelligence about, collective belief in and collective capacity of citizens who function politically as agenda setters and decision makers, not just as electors. Collective efficacy seeks to expand citizen participation in multiple venues: a) in collective/deliberative forums not just as exercising individual choices; b) throughout the political process not just prior to elections; c) in ways that enhance 'representational legitimacy'; d) influence the decision-making/policymaking process; e) create constituencies of accountability whose interests evolve and adapt and f) invite citizens to take risks, be creative and challenge unfairness. However, collective efficacy does not function exclusively outside the electoral context. Indeed, a commitment to collective efficacy may galvanize more citizens to vote, whether as electors of representatives or as voters in referenda or initiatives. By generating a belief in their power to make decisions that affect their lives, institutional arrangements to promote collective efficacy may also increase levels of participation in more conventional forms of voting.

Collective efficacy puts pressure on the idea of the representative as an identity or a status. Rather than seeing elections as a handoff from the constituents to the representative, collective efficacy sees the process of developing a relationship of accountability among constituents, and between mobilized constituents and their representatives, as crucial to the representative's success as well as central to the community's effectiveness in realizing their shared goals. The representative and her constituents influence each other; through the process of representation both may begin to understand their interests differently. Moreover, to realize collective efficacy among her constituents, the representative sees herself as a member of the constituency community rather than as a powerful outsider.

William Simon's idea of the 'critical lawyer' captures this conceptual move in the context of the representational culture of legal professionals.⁸⁵ Simon admonishes critical lawyers to encourage collective bonds among poor, uneducated or less sophisticated clients to modulate the disequilibrium between such clients and their lawyer. To address the power asymmetry between an educated lawyer and her less educated client, the lawyer should value '[c]ommunication among clients and direct participation', precisely because of 'their potential to increase understanding and solidarity and to safeguard against hierarchy'. Simon proposes to 'substitute . . . for the professional fiction that the lawyer is always accountable to the client' a prescription that the lawyer should affirmatively 'seek to create a client capable of holding her accountable'. In the presence of others who are similarly situated, the client gains greater ability to identify her interests clearly, to deepen and complicate her understanding of such interests and to hold the lawyer accountable to that understanding as it evolves over time.

84 *ibid* 918.

85 W. Simon, 'Visions of Practice in Legal Thought' (1984) 36 *Stan L Rev* 469.

Although developed in response to the distinctive professional norms of lawyers, Simon's alternative vision of practice – that a community of interest and accountability is something to be created in the course of representation – resonates with great force in the context of political representation. Like lawyers, political representatives need to check their power by 'creating a community in which members are capable of calling each other to account.'⁸⁶ By creating a community of accountability, citizens enhance their ability to identify and express their interests, especially as their understanding of those interests evolves over the course of the relationship. To the extent such a community of accountability increases a sense of solidarity and reduces a sense of vulnerability, the constituent is also more likely to take risks and be creative in the name of challenging unfairness.

Collective efficacy offers a Simon-like alternative to the largely passive role conventionally assigned to citizens in the electoral arena. It challenges the idea that the representative best serves her district by adopting a fixed identity, whether as a trustee, a delegate or a descriptive representative. Spurred by a commitment to collective efficacy, the representative engages in a collaborative relationship with, rather than a proprietary status over, her constituents. To inform that relationship, the representative seeks institutional forums that give constituents the tools to develop and communicate their collective intelligence and collective power. The representative helps to create a constituency that is agenda rather than candidate-focused, where the interests of both the representative and her constituents evolve through a deliberative struggle.

I will provide four examples of collective efficacy, where ordinary people are important public decision makers whose local knowledge contributes to better public policy outcomes. In these examples, citizen participation increases citizen confidence in democracy. That participation, with and through their representatives, also reflects a justice-based commitment to equal voice, not just equal votes. Indeed, in one of the examples, the Montgomery, Alabama bus boycott in 1955, black citizens could not vote. The 50,000 black residents of Montgomery who refused to ride the buses were sovereign citizens who came to believe in their own power. Without ever casting a vote, their collective commitments ultimately shaped their own fate and that of the nation for years to come. Martin Luther King, Jr rose to international prominence as he became the spokesperson and symbol of that commitment, but it was the discipline and courage of those who walked to work every day that taught the country and the world that democracy is not just a system for selecting leaders. King would have remained a charismatic but relatively unknown Southern preacher had he not been dedicated to principles of collective efficacy. Holding regular mass meetings in the black churches of Montgomery, King helped catalyze the energy of ordinary black citizens. These citizens of Montgomery ultimately came to speak on their own behalf with their tired but determined feet.

In addition to the crucial mass meetings that were the backbone of the Montgomery bus boycott, I draw upon examples of community theater in Brazil, participatory budgeting in Porto Alegre, and a citizens assembly on election reform

⁸⁶ *ibid* 489.

in British Columbia. Through these stories I attempt to illustrate how collective efficacy is not just grass roots participation in alternative spaces. Nor is it civic engagement for its own sake. In each case citizen mobilization influences state or local policy. In each case citizens and their representatives together advance public policy goals. The representative, alone, does not stand in for democracy. Nor do the representatives stand alone. Instead, constituencies of accountability transform the relationship between citizens and their representatives and ultimately between citizens and their government.

From these examples of collective efficacy a new metric of democratic accountability emerges, one that is not dependent on elections alone. This metric is animated by three assumptions: (1) that collective intelligence should inform the outputs of democracy:⁸⁷ ordinary people are important decision makers not just statistical data points; (2) that participatory processes enhance democratic legitimacy:⁸⁸ people have more confidence in outcomes to which they contribute and in which they feel invested and (3) that democracy involves justice-based commitments to voice, not just votes: participation cannot be reduced to a single moment of choice.

Each of these assumptions builds on the values of participation more generally: that participation enables citizens to take risks, be creative, challenge unfairness and contribute to the public debate. Each of these assumptions also responds to the variables that plague our electocracy: disengagement by citizens, distrust of politicians and disgust with policy outcomes. Each of these assumptions alone deserves more space than this essay permits. Together, and with the benefit of more careful study, they could become the basis of a normative account of representation that builds on the potential of citizen participation to yield better outcomes, produce a more legitimate process, and provide a firmer justice-based foundation for democratic accountability. The goal here, however, is more modest. I use these contemporary and historic examples to demonstrate that a more participatory, dynamic and relational approach to democratic accountability – one that enhances rather than displaces elections – is possible, at least at the local level.

Legislative Theater in Brazil

In 1992 a Brazilian dramatist, Augusto Boal, ran on a platform ‘vote for me, elect my theater company’ and was elected to the city council in Rio de Janeiro. Following through on his slogan, he used company members to convene problem-solving constituency meetings among, for example, teachers, AIDS activists, environmentalists and unionized bank employees. He created a network of ‘forum theater’ groups, so called because an audience inspired theatrical enact-

87 Such outcomes would be considered in terms of competence not just responsiveness. In terms of both these considerations, the outcomes presumably would be more informed by those with local on the ground intelligence; they would be more sustainable because more people would be invested in their success; and the right answers might be more likely, at least when measured over time.

88 See discussion in the second section, above, concerning the value of participation.

ment of a real problem created a 'forum' for audience intervention in, and discussion of, the conflict. Using forum theater techniques, citizens from the relevant constituency gathered to improvise a dramatic reconstruction of the challenges or conflicts they share. Audience members were then invited to interrupt the action and substitute for one of the characters when they had an idea that might resolve the conflict.⁸⁹ The scene was then replayed numerous times with different interventions and proposed alternatives in response to the question: could there be a law that would help solve this problem? The dramatic re-enactments were then collectively presented at a theater festival, where the same process was repeated – this time with the other constituency groups providing feedback. Out of this process, Boal ultimately introduced and got passed 13 bills. All of the bills were a product of the collective expertise of the participants.⁹⁰

At one point Boal deviated from his collaborative protocol and introduced a bill that he alone drafted. Boal was goaded into acting unilaterally by his colleagues on the city council who teased him, dismissing his legislative record because he was overly dependent on his constituents for ideas. Determined to introduce an 'original' proposal, Boal went home one night and on his own drafted a bill modeled on a Swedish traffic convention, in which the sound of birds accompanies the changing of the visual traffic signals to alert blind pedestrians that it is safe to cross the street. Only after Boal dropped the bill into the legislative hopper did he meet with his disabled constituents to proudly report his personal policy making. The audience members were outraged. 'Do you want to get us killed?' they asked. 'Not at all,' Boal responded. 'I saw it work with my own eyes in Sweden.' 'Yes,' his constituents replied in unison. 'But in Sweden drivers stop at red lights!' Boal immediately withdrew the bill.

Encouraged by Boal's willingness to engage them in the process of agenda setting and problem solving, his disabled constituents converted their social power into political power. They became a constituency of accountability that made Boal a more responsive and responsible legislator. Their collective intelligence meant they knew more about the problem at hand than did their representative. Boal successfully broadened his role to involve the people themselves in setting the agenda not just making sure he implemented it.

The Montgomery, Alabama Bus Boycott

The value of a constituency of accountability is not limited to holding representatives accountable to produce better outcomes. Such a constituency can also protect representatives when they are attacked. In addition, from the experience of participation a sense of solidarity can emerge that galvanizes individuals' confidence that they can contribute to and affect the outcomes of a public debate.

89 For example, the group of teachers would be invited to make a forum about the problems in education in their neighborhood – problems, in Boal's words, 'that they know about better than anyone else'. J. Cohen-Cruz, 'Theatricalizing Politics: An Interview with Augusto Boal' in M. Schutzman and J. Cohen-Cruz (eds), *Playing Boal: Theatre, Therapy, Activism* (London: Routledge, 1994) 234–235.

90 See Guinier and Torres, n 46 above at 214–216.

At the same time, the process of deliberative struggle allows individuals and their representative to change their minds as to what the appropriate outcome of that struggle might be. To illustrate these process-based points I focus on the attendance by maids and porters at the mass meetings that framed and helped sustain the 1955–6 Montgomery Bus boycott during which more than 50,000 blacks in a single Alabama city refused to ride city buses for more than a year until the buses were desegregated. Although most popular accounts of the boycott elevate Rosa Parks and Martin Luther King as the main characters, the role of the mass meetings helps dispel the idea that the boycott was either a one man or a one woman show.⁹¹

Over the course of the year long boycott of the city buses, mass meetings were held at black churches at least weekly.⁹² The mass meetings were a tool for disseminating information. They helped build morale,⁹³ in part by providing decision-making opportunities for the boycotters.⁹⁴ Participants spoke from the floor, not just the pulpit.⁹⁵

King admits that it was the mass meetings that defined the boycott. In the aftermath of the very first mass meeting, King writes 'I said to myself, the victory is already won, no matter how long we struggle to attain the three points of the resolution. It is a victory infinitely larger than the bus situation. The real victory was in the mass meeting, where thousands of black people stood revealed with a new sense of dignity and destiny.'⁹⁶

The mass meetings evoked the familiar call and response common in many black churches between the people and the preacher, but they also secured the ties between and among the people themselves. King could surely arouse the congregation, but he was more than a powerful stranger uplifting a crowd with a brilliant synthesis of religious fervor, moral purpose and legal justification.⁹⁷ He also

91 T. Branch, *Parting the Waters: America in the King Years, 1954–1963* (New York: Simon & Schuster, 1988) 178.

92 On significant occasions there might have been as many as seven mass meetings in a single night, with some people attending more than one. *ibid* 161.

93 *ibid* 149: 'Speakers built morale at the predominantly female meetings by singling out some of the walking women as heroes.' See also *ibid* 178 (after King's house was bombed, it was decided to re-organize the mass meetings around prayers to renew the spiritual commitment of the boycotters facing a long ordeal ahead).

94 Indeed, although the key members of the newly constituted organization created to spearhead the boycott – Montgomery Improvement Association (MIA) had met earlier in the day to choose their leader, the issue of whether to continue the one day boycott was ultimately left to those who turned up at the mass meeting. More than 5000 blacks showed up and loudspeakers were set up so the crowd, 'which stretched over several acres and across streets and around cars that had been parked at all angles', could hear what was happening inside. A few weeks later, King put the alternatives to a 'taxi army' to the mass meeting after the City police commissioner threatened to arrest taxi drivers who charged less than the regular fare. 'King was stunned when the crowd greeted his proposal (for a car pool, with cars – still a luxury item at the time – donated and driven by middle class blacks) . . . with a church-rocking roar of approval . . . That first night more than 150 car owners signed up to lend their cars to the boycott.' Branch, *ibid* 146.

95 *ibid* 163–164. Indeed, a key movement refrain was first heard at a mass meeting when one of the speakers quoted a congregant who declared 'my feet is tired but my soul is rested'. *ibid* 149.

96 Martin Luther King, Jr, *Stride Toward Freedom: The Montgomery Story* (New York: Harper, 1958) 50.

97 At his very first address on the day Rosa Parks was arraigned, King's oration blended scripture, common sense, and a reference to the US Supreme Court decision in *Brown v Board of Education*. Branch, n 91 above at 140–141.

formed a close bond with the boycotters, such that efforts to discredit him when he was out of town failed easily.⁹⁸ And when warrants were issued by local authorities for the arrest of King and 90 other black ministers, crowds quickly surrounded the police station where they were being booked, to make sure nothing happened to them.

Just as important as their ties to Dr King were their ties to each other. Some of the boycott participants would arrive early in order to reconnect to their friends, neighbors and fellow walkers. The maids and day laborers found solace in the 'joyous unity' of the mass meetings but they also found support in the connections forged with their peers. At one mass meeting, Bayard Rustin witnessed the church begin filling up at 4pm and watched 'the crowd sing hymns and pray on their own for three hours' before the mass meeting was scheduled to begin.⁹⁹

The mass meetings enabled poor, black people to become democratic actors. Their relationship with Dr King was not cabined by the traditional yet static categories of the descriptive representative (who mirrors her constituents), the delegate (who carries forward a predetermined mandate) or the trustee (who relies on her wisdom or virtue and consults her conscience rather than her constituents in deciding how to act). That relationship also demonstrated Bill Simon's claim that the interests of participants are not necessarily captured in their first articulation. Interests evolve over time. The initial call was for a one-day boycott to protest the arrest and arraignment of Rosa Parks. The idea was germinated by a group of black women who were outraged by the arrogant mistreatment several black women had experienced at the hands of the bus drivers and the police. At least two of these women were, like Rosa Parks, arrested for refusing to give up their seats to a white person. At the outset, the goals of the boycott, like its limited term, were quite modest. They included hiring more black bus drivers on bus routes through the black section of town and greater courtesy displayed toward black passengers. But over time, working with a young black lawyer, Fred Gray, the boycotters became more willing to consider a challenge to the idea of segregation of the buses, not just to the way segregation was being implemented. It was not until three months after the boycott began that the MIA agreed to the filing of a desegregation lawsuit; at the time, a lawsuit was considered the 'nuclear' option. Ultimately that lawsuit settled the boycott when the Supreme Court affirmed a three-judge court decision that segregation of the buses was unconstitutional.¹⁰⁰

Robert Moses once said that the most important thing the civil rights movement brought to blacks in Mississippi was not the vote. It was the opportunity to meet. Of course some may immediately shudder at the prospect: beware the endless meeting they will shout. But as the mass meetings in Montgomery demonstrate, there is a public value in meetings that create the capacity for citizens to participate in the act of self-government. Such meetings can take many forms. In

98 At one point in dispersing a crowd assembled at his house after it was firebombed, King reminds them, 'I did not call this boycott . . . I was asked by you to serve as your spokesman.' Branch, *ibid* at 166.

99 Branch, *ibid* 178.

100 *Browder v Gayle* 352 US 903 (1956).

the Montgomery bus boycott, the mass meetings were spiritual havens but also opportunities to learn about, and begin to implement, civil and constitutional rights.¹⁰¹

Citizens' Assembly in British Columbia

The importance of regular meetings (where attendance was extraordinary) reflected the seriousness of purpose that characterized the ordinary citizens after they were invited to participate in the 2004–2005 Citizens' Assembly in British Columbia, Canada.¹⁰² In the Citizens' Assembly [CA] 160 citizens who had never held public office met over an 11 month period to propose changes to election laws. The specific mandate of the Citizens' Assembly was to 'assess models for electing Members of the Legislative Assembly and issue a report recommending whether the current model for these elections should be retained or another model should be adopted.'¹⁰³ According to the plan, any CA proposal for electoral reform would be put to a vote as a referendum in the May 2005 election.¹⁰⁴

Upon his election in 2001, the British Columbia Premier Gordon Campbell kept his campaign promise to institute a citizen review of the First Past the Post (FPTP) electoral system.¹⁰⁵ Although it was surprising that Campbell would 'take the lead in promoting an agenda for change that [was] likely to constrain [Liberal] activity or weaken [his] political position', the premier argued that the electoral system was of such fundamental importance to democracy that the citizens – not self-interested party politicians – should choose how they wanted to elect officials.¹⁰⁶

Eventually, one man and one woman who had never held public office were randomly selected from each of the province's 79 constituencies (electoral districts).¹⁰⁷ Many CA members said they did not know or care about politics prior

101 Branch, n 91 above at 140–141.

102 The decline in public trust of the government increased distortion between votes and legislative seats, and a Canadian federalist tradition of encouraging innovation in provinces resulted in creative electoral reform attempts in at least five provinces. See H. Milner, 'Electoral Reform and Deliberative Democracy in British Columbia' (Spring 2005) *National Civic Rev* 3, 3. However, British Columbia's reform efforts were unique in impetus, selection process, and proposal. The 1996 British Columbia elections are known as the 'wrong-winner' elections because Liberals gained more of the popular vote (42 per cent), but the New Democratic Party (NDP) won the majority of seats with a lower percentage of the vote (39 per cent). See A. Lang, 'But Is It for Real? The British Columbia Citizens' Assembly as a Model of State-Sponsored Citizen Empowerment' (2007) 35 *Politics & Society* 35, 38.

103 R. S. Ratner, 'British Columbia's Citizens' Assembly: The Learning Phase' (Summer 2004) *Canadian Parl Rev* 20, 21.

104 K. Archer, 'Redefining Electoral Democracy in Canada' (2004) 3 *Election LJ* 545, 556.

105 Campbell's party, the Liberal party, won 77 of the 79 seats with only 57 per cent of the votes, the NDP won the other two seats with 22 per cent of the votes, and the Green Party won zero seats with its 12 per cent of the votes. Ratner, n 103 above at 20.

106 R. K. Carty, 'The Shifting Place of Political Parties in Canadian Public Life' (2006) 12 *IRPP Choices* 1, 3.

107 Archer, n 104 above at 556. The idea of selecting representatives by lot has strong democratic roots. See N. Duxbury, *Random Justice: On Lotteries and Legal Decision-Making* (Oxford: Oxford UP, 1998) 26–34. Many leading political theorists of republican government believed the lot to be 'the quin-

to being chosen. However, once invited into the process, people were eager to be chosen and participated diligently as one of the CA members.¹⁰⁸

The CA carried out its mandate in three phases: the learning phase, the public hearings phase, and the deliberations phase.¹⁰⁹ CA members engaged in the learning phase for three months, during which the structure of the assembly and CA staff worked to ensure that the CA members would be able to participate, regardless of prior information or socioeconomic position.¹¹⁰ Many CA members participated 30–40 days in the year and attendance at meetings was over 90 per cent.¹¹¹ They spent weekends hearing expert presentations, reading materials, and participating in small group discussions to develop a set of shared values and a preliminary statement to the public.¹¹² In the next phase, the CA held fifty public hearings across the province.¹¹³ The public hearings attracted approximately 3,000 British Columbians and consisted of presentations, then comments, periods, and suggestions.¹¹⁴ CA members also met with community organizations and accepted over 1,600 written submissions through its website.¹¹⁵ Many British Columbians communicating with the CA confided that the party politics, encouraged by the electoral system, did not allow for a strong citizen voice, public discussion, or the opportunity for people to influence their representatives or convey their values.¹¹⁶ A frequently proposed solution was to reform the electoral system in a way that opened parties to more citizen discussion, participation, and influence.¹¹⁷

In the CA's deliberation phase, small groups decided the most and least important values for choosing an electoral system.¹¹⁸ In televised plenary sessions that were open to the public,¹¹⁹ CA members designed more detailed models of Mixed Member Proportional (MMP) and Single Transferable Vote (STV) systems.¹²⁰

tessential democratic selection device, while elections were considered a means of ensuring more aristocratic rule'. Issacharoff et al, n 6 above at 1151.

108 Carty, n 106 above at 4. CA members were diverse: ages ranged from nineteen to seventy-eight; they worked in a variety of professions; and 11 per cent of CA members were visible minorities. Ratner, n 103 above, 22. However, visible minorities composed 22 per cent of the population; double their representation on the CA. Lang, n 102 above at 40–41.

109 H. Milner, *Making Every Vote Count: Reassessing Canada's Electoral System* (Peterborough, Ont: Broadview Press, 1999) 10–13.

110 One member commented: 'We really felt we were part of some historical very important process They made everybody feel that they were as important as anybody else.' Lang, n 102 above at 41–42.

111 A. Blais, K. Carty and P. Fournier, 'Citizens' Choice of an Electoral System: The Decision of the BC Citizens' Assembly' (1–4 Sept. 2005) 3 (unpublished paper, presented at the 2005 Annual Meeting of the American Political Science Association).

112 The assembly's shared values are: respect people and their opinions; challenge ideas not people; listen to understand; commitment to the process; focus on mandate, preparedness; simple, clear, concise communication; respect inclusivity (all members are equal); positive attitude; and integrity. Milner, n 109 above, 11.

113 *ibid* 12.

114 *ibid*.

115 *ibid*.

116 See Carty, n 106 above, 4.

117 *ibid*.

118 Lang, n 102 above, 46.

119 Milner, n 102 above, 6.

120 *ibid* 13.

According to one CA participant, her own views evolved as a result of her face-to-face encounters with other assembly members. As a resident of Vancouver, she learned from her fellow citizens whose rural backgrounds had been foreign to her about 'the barriers that are in place in the frozen north.' Just having those discussions about what British Columbia is like from all over the territory, she said, led to something that the political science experts did not anticipate: 'We started questioning traditional definitions of what things meant from what was a stable system. Is it really stable if the next government is from the other party and they have to spend the next 2 years remaking everything? Throw out everything?' They also started talking to people and discovered barriers preventing majoritarian systems from delivering real representation: 'voters [were] looking for more nuanced representations than they were getting'.¹²¹

After the Assembly agreed upon a proposal to endorse STV, it was put to the voters of the province. The referendum received 57.4 per cent of the overall vote and a majority of the vote in 77 of 79 constituency districts, but fell just short of the super-majority it would have needed to pass.¹²² The large vote in favor certainly reflected the fervor of the CA participants. Although the CA disbanded five months prior to the election, 142 of the CA members volunteered their time to try to drum up support at local meetings and one member estimates that each of her cohorts chipped in at least \$500.00 of their own money to publicize the referendum.¹²³ The large vote also suggests that the assembly's association with the word 'citizens' signaled to voters this was something they could trust. The imprimatur of 'citizens' was like the Good Housekeeping Seal of Approval.¹²⁴ CA members enjoyed unexpected 'legitimacy' in representing their peers as they attempted to influence public policy. The proposal was anchored in horizontal relationships — among CA members and also between CA members and the citizens they encountered at town halls, public forums and the grocery store. Those relationships helped CA members break through divisions.¹²⁵

On the other hand, the measure lost. The narrow defeat reflects the high threshold that the Premier set for passage. That the measure lost can also be explained by the fact of very little public discussion regarding the referendum.¹²⁶ Neither of the major parties took a position on the issue,¹²⁷ and the CA education budget was

121 Open source interview with Shoni Field, former member of the British Columbia Citizens' Assembly, 2 November 2006.

122 The referendum would have passed if it had been supported by 60 per cent of all voters. See J. H. Snider, 'Solving a Classic Dilemma of Democratic Politics: Who Will Guard the Guardians?' (Winter 2005) *National Civic Rev* 22, 25.

123 Shoni Field, interview: '142 of the CA members committed to stay on for another 5 months. Between us we did about 600 public presentations, a couple hundred media interviews.'

124 H. Gerken, 'The Double-Edged Sword of Independence: Inoculating Electoral Reform Against Everyday Politics' (2007) 6 *Election LJ* 184, 195.

125 Shoni Field, interview: 'This province that everyone says is really divided and polarized and extreme was actually united. Actually the political system drives us apart. We kept hearing across the political spectrum people were looking for the same thing.'

126 Half of the electorate had not heard of the referendum before voting and one-third of the population had not heard of the referendum or even the CA. Lang, n 102 above at 47.

127 Almost no political party had an incentive to support an electoral system that would so weaken the role of political parties. Snider, n 122 above, 25–26.

negligible.¹²⁸ Whereas the Assembly had a budget of more than \$5.5 million dollars to educate itself about election procedures around the world, CA members had an official budget of \$800 to disseminate information to the general public about its proposal.

Though British Columbia did not become 'the first political jurisdiction in the world to change its electoral system by citizen-deliberative means',¹²⁹ and despite lack of widespread public debate, the referendum was still an affirmation of a participatory and deliberative process. Even after its defeat, citizens put pressure on politicians to re-run the referendum in a fair fashion (by providing money for public education and allowing a sample map to be drawn). More importantly, they succeeded in demonstrating that once citizens get involved they change the terms of the debate.¹³⁰ British Columbia's Citizen's Assembly illustrates George Kateb's point that the essence of representative democracy is that we all 'take turns standing for the whole.'¹³¹

Participatory Budgeting in Porto Alegre

The institution of participatory budgeting in Porto Alegre also shows how many ordinary citizens are willing to spend time in meetings that offer a chance to affect public policy; at the same time the institutionalization of these meetings means that ordinary citizens get to become representatives. The experience of participating renews citizen confidence in their government; it also produces competent outcomes that citizens are willing to support, as evidenced by increases in tax revenues.

The new Brazilian Constitution of 1988 embraced decentralized policymaking and established processes for citizens to participate in formulating, managing, and monitoring social policies.¹³² The two mechanisms that gained the most momentum in the 1990s were management councils and participatory budgeting ('PB').¹³³ PB creates nested councils of representation to allow citizens some opportunity – beyond simply voting for elected representatives – to bring their lived experience to bear on both the criteria for, and content of, decision making.

The major goal of PB is to 'encourage a dynamics and establish a sustained mechanism of joint management of public resources through shared decisions

128 *ibid* 26.

129 Lang, n 102 above, 36.

130 Partisan elites have difficulty competing with a citizens' assembly 'on authenticity grounds' and have a hard time ignoring its proposals. Chris Elmendorf and Heather Gerken, 11 November 2005 at <http://prawfsblawg.blogs.com/prawfsblawg/2005/11/gerkenandelme1.html> (visited 18 October 2007).

131 G. Kateb, 'The Moral Distinctiveness of Representative Democracy' (1981) 91 *Ethics* 257, 260. See also H. Gerken, 'Dissenting By Deciding' (2005) 57 *Stan L Rev* 1745 (2005).

132 V. Schattan, P. Coelho et al, 'Participation and Public Policies in Brazil' in J. Gastil and P. Levine (eds), *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the Twenty-first Century* (San Francisco: Jossey-Bass, 2005) 174.

133 *ibid*.

on the allocation of budgetary funds and of government accountability concerning the effective implementation of such decisions.¹³⁴ The PB process 'attempts to transform the clientelistic, vote-for-money budgeting reality into a fully accountable, bottom-up deliberative system' that is driven by the needs of municipal residents.¹³⁵ Three principles of sustained popular participation shape the decision-making process of the municipal government.¹³⁶ Those principles then govern the relationship between the municipal executive's administrative units, which must manage the budgetary debate with the citizens, and community organizations, which mediate between the choice of priorities for regions and citizen participation.¹³⁷

Since 1989, 250 Brazilian municipalities have adopted PB, the most famous and successful of which has taken place in the city of Porto Alegre.¹³⁸ In March delegates are elected from those present at the regional assembly to work out the region's spending priorities for the next year. These regional meetings involve information sharing, deliberation on priorities and projects, and oversight of projects being implemented.¹³⁹ The delegates then meet every week for the next few months in neighborhoods throughout the region to discuss potential projects – from transportation, sewage, land regulation, day care centers and health care – for the city to fund.¹⁴⁰ While most decisions are finalized by voting, participants spend a significant amount of time leading up to the votes in deliberative discussions, both in meetings and 'at the edges of official forums.'¹⁴¹ In June there is a second regional plenary assembly where delegates report regional budget proposals and the region residents in attendance vote on the proposal. Two delegates (and substitutes) are elected to represent the region at the Participatory Budgeting Council (PBC). The PBC is a citywide group that meets at least once a week from July to September to devise a citywide budget from the regional proposals and to allocate funding across the regions.¹⁴² Because most citizen delegates to the

134 B. de Sousa Santos, 'Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy' (1998) 26 *Politics and Society* 461.

135 A. Fung and E. O. Wright, 'Deepening Democracy: Innovations in Empowered Participatory Governance' (2001) 29 *Politics and Society* 5, 13.

136 de Sousa Santos, n 134 above. The three principles are: a) all citizens are entitled to participate, community organizations having no special status or prerogative in this regard; (b) participation is governed by a combination of direct and representative democracy rules and takes place through regularly functioning institutions whose internal rules are decided upon by the participants; (c) investment resources are allocated according to an objective method based on a combination of 'general criteria'—substantive criteria established by the participatory institutions to define priorities—and 'technical criteria'—criteria of technical or economic viability as defined by the executive and federal, state, or city legal norms—that are up to the executive to implement.

137 *ibid.*

138 Porto Alegre, the capital of the Brazilian state of Rio Grande do Sul, has a population of approximately 1.3 million and is of major economic importance in the state. In recent decades, it has experienced significant population growth and an accelerated process of urbanization.

139 A. Schneider and M. Baquero, 'Get What You Want, Give What You Can: Embedded Public Finance in Porto Alegre' (Institute of Development Studies at the University of Sussex, Brighton, WP no 266, May 2006, at www.ids.ac.uk/ids/bookshop/wp/wp266.pdf (visited 20 Sept 2007) 10.

140 Fung and Wright, n 135 above, 14.

141 G. Baiocchi, 'Citizens of Porto Alegre: In which Marco borrows bus fare and enters politics' Boston Rev Mar/Apr 2006 at <http://bostonreview.net/BR.31.2/baiocchi.html> (visited 8 Oct 2007).

142 Fung and Wright, n 135 above, 14.

citywide Council are 'nonprofessionals', city agencies offer courses on budgeting and interested participants from the regional assemblies may attend these seminars as well.¹⁴³ On 30 September, the PBC submits its proposed budget to the mayor who can accept the budget or veto it. If the mayor vetoes the budget it is remanded to the PBC for revision. The PBC can amend the budget or override the mayor's veto with a 2/3 vote.¹⁴⁴

It is estimated that approximately 100,000 people, or eight to ten per cent of the adult population of Porto Alegre, have taken part in the budgeting process¹⁴⁵ and that participation has rapidly increased over time.¹⁴⁶ By 2004, up to 20,000 people were attending the first round of budgeting meetings.¹⁴⁷ Those with incomes below 'two minimum salaries' made up almost 40 per cent of the participants in all the meetings, but the same group made up only 23 per cent of the regional delegates and 21 per cent of the municipal councilors.¹⁴⁸ In almost all the meetings, poorer people outnumbered more wealthy people but it was the lower-middle and middle income groups that gained representational roles in the meetings, 'though the very poor remain an important group.'¹⁴⁹

When asked why they participated in the budgeting process, the primary reason given was 'because they appreciated 'investment in poor areas', ie, the material benefit.'¹⁵⁰ However, the next top six responses were 'non-material' in nature: honesty, seriousness, innovation, democracy, competence, and transparency.¹⁵¹ Poor people were attracted by the material benefits they hoped to obtain, while middle sector people were interested in both material benefits and 'the democratic and transparent nature of governance.'¹⁵²

The Porto Alegre experiment in Participatory Budgeting has widely been considered a success. *Exame*, an influential business journal, has repeatedly named Porto Alegre as the Brazilian city with the best quality of life.¹⁵³ In 1996, the municipal government was evaluated as 'excellent or good' by 65 per cent to 75 per cent of those asked.¹⁵⁴ By contrast, before PB the Porto Alegre administration in 1988 was characterized by a 'bloated mayoral office, low salaries, dissatisfied employees, decayed equipment, old vehicles, obsolete machinery, investment capacity around zero; in sum, absolute incapacity of municipal authority to attend

143 *ibid.*

144 *ibid.*

145 *ibid.*

146 Schneider and Baquero, n 139 above, 13.

147 Baiocchi, n 141 above.

148 Schneider and Baquero, n 139 above, 13.

149 *ibid.*

150 *ibid.*

151 *ibid.*

152 *ibid.*, 13–14.

153 *Exame* considered the following indicators: literacy, enrollment in elementary and secondary education, quality of higher and postgraduate education, per capita consumption, employment, child mortality, life expectancy, number of hospital beds, housing, sewage, airports, highways, crime rate, restaurants, and climate. The state capitals of Belo Horizonte and Belem are also considered cities that 'work' because they have achieved unheard of levels of social-service provision, including very high rates of preschool enrollment and universal clean water and sewers. Baiocchi, n 141 above.

154 de Sousa Santos, n 134 above. The author also notes that 'if an evaluation of "medium plus" is considered positive' the government actually had an approval rate of 85 per cent.

to the minimal needs of maintaining services, investment, and renewal'.¹⁵⁵ Within five years, 'the city had turned itself around, having achieved, among other things, 'a rationali[z]ation of expenses and inherited debts; refinancing of the deficit; administrative restructuring; and recuperating receipts.' ¹⁵⁶ There was also an 'impressive decrease' in tax avoidance: failure to pay the property tax decreased from 20 per cent in the early 1990s to 13.5 per cent in 1995.¹⁵⁷ The increases in municipal government revenue were attributed to participatory budgeting. Participatory meetings were used to mobilize support for tax reforms. In addition, 'revenues, representation, and expenditures' were closely related – the Mayor for the years 1997–2000 stated that 'people were willing to contribute more taxes because they understood that 'taxes return to them in the form of public services.' ¹⁵⁸

There have been negative indicators as well, including: 'deep social inequalities (like the rest of Brazil), the housing problem, and unemployment.' ¹⁵⁹ One-third of the population lives in slums and the total population in slums doubled from 1981 to 1990; meanwhile only fifteen families own the land available for urban development.¹⁶⁰ In this environment the dangers of participatory budgeting are its inefficiency, the possibility of incompetence, alienation and distrust, anarchy where no one is accountable, corruption and the domination by an articulate few. The benefits, however, are equally numerous. PB loosens the grip of traditional political elites and generates more deliberative solutions that ultimately sustain broad, even deep participation. It demystifies government; improves the quality of life for the poor; provides local sources of information and energy for new forms of creative problem solving. It combines an educational component with an opportunity to win vital improvements for the community, thus enticing more disadvantaged segments of the population to participate. It trains people for citizenship through problem solving, communication and strategizing. It transforms the relationship between the government and the governed. Poor people actually get to make decisions.¹⁶¹

Ultimately, the preceding four examples of collective efficacy illustrate ordinary people as quite capable decision makers. Their participation in a collective effort can increase their own as well as others' confidence in the legitimacy of public policy decisions. Moreover, their participation can play a justice-affirming role. Citizen participation can produce better outcomes, legitimate the process of decision-making and inspire people to pursue their commitments to justice. In addition, through relationships of accountability, citizen participation can

155 Schneider and Baquero, n 139 above, 15.

156 *ibid.*

157 *ibid* 16.

158 *ibid* 17.

159 de Sousa Santos, n 134 above. It is unclear whether the author is referring only to Porto Alegre here or if he is discussing the entire state of Rio Grande do Sul.

160 *ibid.*

161 '... Having thousands of ordinary citizens voice opinions and observe the process increases transparency, taps into local sources of information, and improves the accountability of elected officials. And by allowing citizens to directly influence the allocation of resources in their communities, participatory budgeting energizes citizen engagement and strengthens civil society.' Baiocchi, n 141 above.

transform the manner in which political or community representatives understand their role. Representation becomes an interdependent activity rather than an individual role. In each of these examples, representatives help convert the social, relational power of citizens into political power that is not bounded by the act of voting in elections.¹⁶²

As was the case for the randomly selected citizens in British Columbia, representatives can function as agents of democracy not just beneficiaries of electocracy. Whereas the goal of electocracy is presumably to win power by selecting the right representative, the goal of the Citizens' Assembly was to restore citizens' confidence in their collective capacity to help make decisions that affect their lives. Similarly, in Porto Alegre, the representational relationship is more like a partnership and less like a sanctified and discrete moment of choice. The representatives at the local and regional councils are employees of democracy rather than the sole proprietor of a district.¹⁶³ Indeed, elected officials, like Augusto Boal, who rely on principles of collective efficacy to mobilize constituencies of accountability are arguably better able to discharge their formal roles. Boal quickly learned that he did not need to 'possess' the sources of his accountability or prove that he was smart enough to deserve his position.

At the same time as it may change the role of the representative, a commitment to collective efficacy imposes different burdens on the representative. The politician begins 'to see his job as an organizer, as part teacher and part advocate, one who does not sell voters short but who educates them about the real choices before them'.¹⁶⁴ Representation becomes a set of commitments to building power among constituents not just pursuing power by selecting the right individual to exercise power on your behalf. Representatives are no longer confined to the conventional conception of trustee, delegate or descriptive mirror. Rather than powerful strangers with a proprietary interest in their district, representatives can become facilitators of a public dialogue, energizers for public action, or organizers of public problem solving.

The potential to change the representative's role is important, yet representatives did not act alone in any of these examples. In Montgomery, the high levels of energy and attendance at the mass meetings galvanized and reinforced the commitment of participants to 'vote' with their tired feet, walking day after day rather than riding the Jim Crow buses. The fact that middle class blacks then volunteered their cars to create a 'taxi army' also enhanced the capacity of the boycotters to act consistent with the belief that they can make things happen.

162 The representative is selected by lottery in the Citizens Assembly; by a self-constituted nominating committee in the bus boycott; by those who show up for a meeting open to all residents in Porto Alegre, and by formal election to the city council in the case of Augusto Boal. The manner of selection is not the focus, although it is no doubt relevant.

163 Cf Mansbridge, n 7 above.

164 This is precisely what US Senator Barack Obama, community organizer turned politician, claims as his original goal. He attempted to apply the techniques of community organizing to mobilize people to work for change. J. Scott, 'At State Level, Obama Proved to be Pragmatic and Shrewd' *New York Times* 30 July 2007, A1, A12. Of course, not all politicians need become community organizers or teachers themselves; but the principle of collective efficacy suggests they should be sensitive to the need to work alongside community organizers and teachers.

Moreover, institutional structures (the black church, the interactive theater, the citizen's assembly) helped incubate greater citizen confidence in government decisions and infused those decisions with local knowledge. In Porto Alegre, uneducated workers routinely join with lawyers and businesspeople to determine the criteria for allocating state funds within their municipality. Since participatory budgeting was introduced in the early 1990s, more than 100,000 citizens of Porto Alegre have played a role in the budgeting process, influencing outcomes that are accountable to the concerns of the poor, not just the rich. To varying degrees, such institutional arrangements encourage the belief among groups of people that achieving their goals is possible; enhance the capacity of groups of people to act consistent with that belief; and succeed over time in increasing levels of citizen participation in agenda setting, decision making and relationships of accountability.

Augusto Boal's legislative theater, the Montgomery Bus Boycott, British Columbia's Citizen's Assembly and Participatory Budgeting in Porto Alegre are each, in their own ways, schools of our democratic imagination. They teach us to picture horizontal, not just vertical, relationships among citizens as a vital source of collective political power. They educate all of us, not just those who participate. We all learn that an informed public is capable of thinking creatively, asking critical questions and acting efficaciously. And most of all we learn that representation itself can become more efficacious when it is treated neither as a proprietary status nor a fixed identity but as a relationship.

CONCLUSION

This essay has considered the narrowing and distorting effect of the focus on elections rather than the efficacy of individuals working together, with their representatives, to address their needs and pursue ways to make changes in society. In a similar vein, my own work as a civil rights attorney in the 1970s and 1980s was animated by, and preoccupied with, elections as the primary means to attain a richer, fuller sense of participation in democratic self-governance. As a lawyer in the Civil Rights Division of the United States Department of Justice and subsequently as the head of the voting rights project of the NAACP Legal Defense Fund, I sought to extend an 'ancient and honorable tradition' of participation through voting to black citizens who were denied equal access to the franchise in the deep South of the United States. For blacks then and for many immigrants today, a focus on citizenship has included a focus on participating in elections. In particular, I worked in 1981 and 1982 with a coalition of civic and law reform organizations across the political spectrum to extend and amend the Voting Rights Act of 1965 to assure blacks and Latinos and other historically disenfranchised people of color the same opportunity as other members of the political process to elect representatives of their choice. I helped litigate the first case to reach the United States Supreme Court interpreting those amendments to the VRA in a case out of North Carolina. Opportunity to participate in the political process, first and foremost, meant the ability to elect candidates of choice.

Given my own experience, I can hardly dispute the idea that elections are ‘an ancient and honorable tradition’. I acknowledge the symbolic and functional significance of elections. I recognize as well that those who support electocracy and those who support collective efficacy agree on many things. We agree that legitimacy, accountability, good public services and competence are important democratic goals. Where we seem to disagree is on the extent to which citizen participation is crucial to the realization of these goals and to the extent it is crucial, whether it can be cabined into competitive contests.¹⁶⁵

What I question, in other words, is the conventional wisdom that the way to fix democracy is primarily to fix its election system. The idea of electocracy is a crabbed view of democracy, especially to the extent it distances political representatives from their constituents and constituents from one another. Despite its self-affirming origins, the claim by members of the British House of Lords that elections are no panacea has merit. Rule by powerful strangers, whether elected, appointed or knighted, is a challenge for democracy.

I have argued that those committed to democracy in the US should contemplate the potential of building collective efficacy among our fellow citizens to answer that challenge. I ask: can we move beyond impoverished ideas about representation, where representation is anemically virtual, where representatives act as fixed surrogates rather than dynamic partners, and where winner-take-all district based elections short circuit the need to encourage all voters to join in their own self-definition as a community and as a vibrant constituency of accountability? This question ultimately seeks to illuminate a larger truth: that democracy is about self governance not just self government.

Admittedly preliminary and unabashedly utopian, this essay raises without answering other equally important and even more practical questions. It gives examples at the municipal or provincial level but does not explore their applicability to regional or national constituencies. It anticipates new responsibilities for the representative that many will resist. More work needs to be done to elaborate and integrate the details of such responsibilities. This essay is an invitation for that process of elaboration to begin.

165 See M. Kang, ‘Race and Democratic Contestation’ (unpublished draft, on file with author). Kang seeks to dislodge the idea that inter-party competition within a two party system is an adequate proxy for democracy. Kang’s surrogate, the notion of ‘democratic contestation’, emphasizes political competition among political leaders. However, Kang simply moves the idea of competition to another level – contestation among political elites rather than contestation within the electorate.