

“Hobbits are mostly apathetic and ignorant about politics. They lack strong, fixed opinions about most political issues. Often they have no opinions at all.” (p. 4)

“Hooligans are the rabid sports fans of politics. They have strong and largely fixed worldviews. ... [they] consume political information, although in a biased way.” (p.5)

## CHAPTER 6

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# THE RIGHT TO COMPETENT GOVERNMENT

Democracy with unconditional universal suffrage grants political power in a promiscuous way. When hobbits and hooligans vote, they exercise political power over others, and this cries out for justification. It needs to be justified against alternative systems—in particular, against epistocratic systems that try to reduce the damage hobbits and hooligans might do.

I can point to the average voter and reasonably ask, “Why should *that person* have any degree of power over me?” I can similarly turn to the electorate as a whole and inquire, “Who made *those people* my boss?” As we saw in chapter 2, most of them have little sense of what’s going on. Why should I be subject to the rule of hobbits and hooligans?

In chapter 1, I introduced two basic theories about how to distribute political power. Proceduralists say that some ways of distributing power are either intrinsically unjust or intrinsically just. Instrumentalists say that we should (or at least *may*) distribute political power in whatever manner best produces just outcomes, where such outcomes are defined independently of the procedure that produced them. I said that in my view, the choice between democracy and epistocracy is purely instrumental. Over the past few chapters, I’ve debunked a

“A political system is epistocratic to the extent it distributes political power in proportion to knowledge or competence, as a matter of law or policy” (p. 208).

number of proceduralist arguments against epistocracy and on behalf of democracy. I’ve also provided some empirical evidence that democratic electorates tend to act, on the whole, in incompetent ways.

A democrat, however, could in principle just accept everything I’ve argued for so far, but then remark, “Sure, democracies are not intrinsically just, and epistocracies are not intrinsically unjust. Let me even agree for the sake of argument that epistocracies even outperform democracies. But even if so, that doesn’t show that we’re *required* to choose epistocracy over democracy. After all, maybe justice simply requires that we choose a political system that’s *good enough*. Why think we have to pick the *best*- or even *better*-performing system? That’s a demanding view, and you haven’t yet defended it.”

The hypothetical democrat has a point. In our daily lives, we aren’t generally required to maximize the good. An economist might add that while political competence is important, presumably there will be diminishing marginal returns and increasing marginal costs as we push for ever more competent and better-performing political decision-making methods. Resources, time, and effort spent on trying to produce more effective or competent government are resources, time, and effort not spent on other valuable things. From a cost-benefit analysis perspective, the *most competent* government probably might not be worth the price we would have to pay for it.

This chapter responds to these worries. I won’t argue for the stronger instrumentalist claim that we are required to use the most competent political system. Instead, I will argue for the weaker instrumentalist claim that it is presumptively unjust to use an incompetent political decision-making system when there is a more competent one available. In the end, my final argument for epistocracy is effectively this:

1. *Against proceduralism*: There are no good proceduralist grounds for preferring democracy to epistocracy.
2. *The competence principle*: It is presumed to be unjust and to violate a citizen’s rights to forcibly deprive them of life, liberty, or property, or significantly harm their life prospects, as a result of decisions made by an incompetent deliberative body, or as a result of decisions made in an incompetent way or in bad faith.

Political decisions are presumed legitimate and authoritative only when produced by competent political bodies in a competent way and in good faith.

3. *Corollary of the competence principle*: Presumptively, we ought to replace an incompetent political decision-making method with a more competent one.
4. *Comparative institutional claims*: Universal suffrage tends to produce incompetent decisions, while certain forms of epistocracies are likely to produce more competent decisions.
5. *Conclusion*: We should probably replace democracy with certain forms of epistocracy.

Over the past few chapters, I've mostly argued for the first and fourth premises. I'll argue for the second and third ones in this chapter. In this and following two chapters, I'll supply more reasons in favor of the fourth premise.

### DEMOCRACY AND POLITICAL INCOMPETENCE

Most of my fellow citizens are incompetent, ignorant, irrational, and morally unreasonable about politics. Despite that, they hold political power over me. These people can staff offices of great power and wield the coercive authority of the state against me. They can force me to do things I do not wish to do or have no good reason to do. They wield their power in ways that they cannot justify, and impose policies on me that they would not support if they were informed or processed political information in a rational way.

At least at first glance, it seems that as an innocent person, I should not have to tolerate that. Just as it would be wrong to force me to go under the knife of an incompetent surgeon or sail with an incompetent ship captain, it seems wrong to force me to submit to the decisions of incompetent voters. People who exercise power over me—including other voters—should do so in a competent and morally reasonable way. Otherwise, as a matter of justice, they ought to be forbidden from exercising power over me, or there ought to be robust institutions in place that protect me from their incompetence. Or so I will contend.

In this chapter, I argue that citizens have at least a presumptive right to have a competent decision-making body, in a competent way, exercise any political power held over them. They ought not be subject to incompetently or capriciously made high-stakes political decisions.

In realistic circumstances, universal suffrage will often violate this presumptive right. Current democracies are to that extent unjust. The only reason to put up with democracy, I will argue, is if we cannot find a way to make epistocracy work better.

### THREE INTUITION PUMPS

Before moving on to my main argument, I want to present three “half” ones. These are meant to pump your intuitions. My goal here is to show that people seem inclined to make exceptions on behalf of democracy that they wouldn’t make elsewhere; they tend to hold democratic bodies to lower moral standards than they hold others.

#### *How Do We Respond to Pollution?*

Most of my readers and fellow philosophers believe that the government not only may but instead *must* regulate carbon emissions. Their basic assertion is that pollution is a collective action problem. On an individual basis, any one of us can pollute to our heart’s content, and it would have no real impact. But if we *all* pollute to our hearts’ content, the results can be catastrophic.

The problem is that as individuals, we have little reason to change our behavior. Consider some of my behaviors. I fly over twenty times per year. I drive a twin-turbo sports sedan, which I generally leave in Sport or Sport+ mode for maximal acceleration. I play electric guitar through a high-wattage tube amp rather than acoustic guitar. I leave the air conditioner on in my house all summer. I almost never shut off any of my three computers. Out of the goodness of my heart, I might reduce my energy usage, but what good would it do? My individual impact is so small that such sacrifices would make no difference. I would suffer, but it wouldn’t help.

This line of reasoning applies to each of us. As individuals, none of us have much incentive or reason to pollute less, even though we all

want everyone to pollute less. Unilateral reductions in consumption have purely symbolic value.

Therefore, most of my colleagues conclude, we should license the government to regulate pollution levels. Government can solve our collective action problem. Call this kind of reasoning the public goods argument for environmental protection.

As we saw in chapter 2, we face something similar to this collective action problem when it comes to voting. It's not precisely the same: if I were the only voter, my vote would make all the difference, while if I were the only polluter, my pollution would still make little difference. But it's similar enough: given that there are so many other voters, for each of us, our individual votes make no difference. We have every incentive to free ride on others' efforts, externalize the cost of our biases onto others, and pollute democracy with our uninformed, misinformed, or irrational votes.

If the argument for regulating air pollution is sound, why not regulate votes as well? Why does the public goods argument justify regulating air pollution, but doesn't justify regulating voting pollution? Why is it legitimate to regulate pollution to protect us from ourselves, yet not legitimate to regulate voting to protect us from ourselves? In chapters 4 and 5, I examined a series of deontological arguments that tried to show that voting rights are different, but none of these arguments succeeded. So these questions remain open.

### *Is King Carl Acting Unjustly?*

Imagine that the unfortunate kingdom of Bungleland suffers under the rule of King Carl the Incompetent. For the most part, King Carl means well. But as his epithet implies, King Carl is incompetent.

A good king would have a strong grasp of history, sociology, economics, and moral philosophy—all subjects needed to understand which policies secure social justice and promote the common good. Despite his ignorance, Carl has strong opinions about all these subjects. He does not form his political beliefs and policy preferences after examining evidence. Instead, he tends to hold political beliefs that he finds flattering. He chooses beliefs and courses of action that reinforce his self-image. Often, Carl just chooses in the heat of the

moment, based on his gut feelings. He pays little attention to the consequences of his actions. Carl takes credit for any good that happens during his reign, but blames bad results on his political enemies. He has no clue whether he's making things better or worse.

Bungleland is a constitutional monarchy. By law, Carl must respect basic liberal rights, such as the right to free speech and the right of immunity to arbitrary search and seizure. And for the most part, Carl does respect these rights. For the most part, Bungleland enjoys the rule of law.

Still, King Carl retains expansive discretionary power inside these constitutional limits. He may choose economic, environmental, educational, land use, and foreign policies. He appoints nearly every position in government. Carl may start wars, change property regimes, set central bank interest rates, impose tariffs and trade restrictions, issue industrial and commercial regulations, transfer wealth from one person to another, create licenses and restrictions on entry into professions, tax at whatever level he prefers, choose public school curricula, legalize or criminalize drugs, decide which people may enter or leave the kingdom, determine the penalties for breaking the law, and much more. Moreover, sometimes he exceeds the authority granted to him by his country's constitution, and much of the time, he gets away with it.

Carl's subjects bear the burden of his mistakes. His subjects face profligate spending, high debt, foolish underregulation in some places, and foolish overregulation in others. They suffer through symbolic politics; Carl frequently chooses counterproductive policies because, in his mind, imposing those policies shows his commitment to noble goals. Carl's subjects live with lower economic opportunities, higher crime, higher prices, and greater injustice than they would under a competent ruler. His decisions can deprive citizens (and foreigners) of opportunity, liberty, property, and even life.

Now ask, Is Bungleland a *just* regime? One might think it's obviously not—after all, Bungleland is a monarchy. Monarchies tend to imbue a king with political power just because they gestated in the right womb at the right time. That is, it seems like a silly way to distribute political power. And so most modern readers conclude that monarchies are inherently unjust. Suppose they are right. Now ask, Is that the *only* problem with Bungleland?

Consider, in contrast, Rivendell, ruled by Lord Elrond the Wise. Elrond always chooses what's best for his subjects. He uses all available information. He knows all there is to know about the social sciences. Elrond consults all rational and reasonable points of view. And he always makes decisions in a rational, reasonable way, free of bias and caprice. You might believe that monarchies are inherently unjust, regardless of how well they perform, and so even Lord Elrond's rule is unjust. Perhaps you are right. But even if we grant that Lord Elrond's rule is unjust, it looks like Carl's rule is worse and even more unjust. Here the difference is not in the *kind* of regime—they are both hereditary monarchies. Instead, the difference lies in *how* Elrond and Carl make their decisions, and how those decisions affect their subjects.

Consider some real-life examples. Caligula, Nero, and Antonius Pius were all emperors of Rome. If you think monarchy is inherently unjust, then you must conclude that they each ruled unjustly simply by virtue of being monarchs. But even if that's so, they aren't equally unjust. Caligula and Nero were wicked and evil men, and their subjects suffered greatly from their depraved decisions. Antonius Pius brought his subjects peace and prosperity, and instituted reforms that further protected and promoted his subjects' civil liberties. The way Caligula and Nero made decisions was unjust, while the way Antonius Pius made them was comparatively good and just.

Bungleland is unjust not merely because it is a kingdom or the wrong form of government. The fact that the king makes decisions *badly* is an additional injustice. He doesn't use his power wisely. He owes his subjects a duty of care. Their lives and livelihoods are in his hands, and his recklessness is a danger to them all.

Now imagine things change in Bungleland. King Carl dies, but before his death, he converts his kingdom into a democracy. Yet suppose that the more things change, the more things stay the same. As a collective body, the voters of Bungleland are no better—no wiser, no more rational, no less capricious—than King Carl. Suppose that the majority of voters in Bungleland are hobbits and hooligans, while only minority are vulcans. Instead of one incompetent ruler, Bunglanders now have many.

What then? Would replacing King Carl with an equally incompetent democratic majority *sanctify* incompetent decision making? Or would the incompetent decision making impinge on the democratic

majority's right to rule? Again, in chapters 4 and 5, I examined a wide range of deontological arguments that tried to demonstrate there is an inherent difference between incompetent Carl and an incompetent majority, but these arguments did not work. Thus, these questions remain open.

### *Why Don't We Let Six-Year-Olds Vote?*

Why don't we let little kids vote? Why not let a first grader, a fifth grader, or at least a high school junior vote? There seem to be three basic reasons:

*Membership:* Little kids are not yet full members of society, so they don't *deserve* a vote.

*Dependence:* Little kids will just vote however their parents tell them to vote, so giving them a vote is just giving their parents an extra vote.

*Incompetence:* Little kids don't know enough to vote well.

Most people regard each of these reasons as sufficient to justify restricting the suffrage. That is, even if two out of the three concerns were shown to be false, most people would think the remaining issues would still be enough to stop kids from voting.

With that, let's consider the third complaint. There is a simple argument against letting high school juniors (or younger students) vote: their votes affect all us. A voter chooses for everyone, not just themselves. We might worry that most sixteen-year-olds lack the wisdom or knowledge to cast smart votes. Since politicians tend to give voters what they want, lowering the voting age would produce lower-quality government. We forbid them from voting because we want to protect ourselves from them.

While many people accept this argument, it has implications they aren't inclined to accept. If ignorance is a sufficient reason to exclude youths from voting, it should be sufficient reason to exclude large swaths of the voting public.

As I discussed in chapter 2, political knowledge is not evenly spread among all groups. If you think that the demographic group called "sixteen- and seventeen-year-olds" is too ignorant to vote, then



you should also be in favor of excluding low-income earners and black people from voting, since on the whole, their levels of political knowledge are comparable. Consider the following two statements:

- Most people between the ages of fourteen and eighteen are too ignorant to vote well, although some are well informed. Nevertheless, we should ignore individual differences and just prohibit everyone from this demographic group from voting.
- Most poor black women are too ignorant to vote well, although some are well informed. We nevertheless should ignore individual differences and simply prohibit everyone from this demographic group from voting.

Most people accept the first notion but recoil at the second. They favor discriminating against some demographic groups, but not others, even though their grounds for discriminating against one applies just as well to the others.

Here's an alternative idea: instead of just discriminating against all children under age eighteen, instead of treating them all the same and assuming they're all incompetent, why not permit them to vote provided they can demonstrate a sufficiently high level of political competence? For instance, why not grant them the right to vote if they could pass the civics test portion of the US citizenship exam. (As I'll explain in the next chapter, most of the information on tests like these isn't useful for being a competent voter, but a person who can pass that test probably has more of the knowledge that is useful.)

But there's a problem. If we conclude this is a reasonable standard for a sixteen-year-old to meet, many adults of voting age would fail to meet it. It seems arbitrary to merely assume everyone under age eighteen is incompetent yet everyone over eighteen is competent. It seems unjust or at least morally arbitrary to deprive competent, wise sixteen-year-olds of the right to vote simply because they are members of a demographic group that is, as a whole, not particularly competent, when we would not thereby be willing to discriminate against other demographic groups with similar levels of political ignorance. We know, for example, that rich white men tend to have high levels of basic political knowledge, while poor black women tend to have

low levels, but we wouldn't think that this would justify a rule that says poor black women can't vote, while rich white men can.

So instead of engaging in age discrimination, as modern democracies all do, why not subject *everyone* to a voter competence exam? Why not say that by default, regardless of age, everyone starts off with zero votes, but a person can acquire a right to vote provided they can demonstrate competence? Interestingly, none of the deontological arguments in chapters 4 or 5 addressed these questions at all. Most democrats just assume that only adults should have the right to vote, and they don't reflect on why they think it permissible to exclude children from voting.<sup>1</sup>

### A PRESUMPTIVE CONDITION OF THE RIGHT TO RULE

My thesis in this chapter is that competence and good faith are at least *presumptive conditions* of the right to rule. I'll start by explaining what I mean by *the right to rule*, and what it means for competence to be a presumptive condition of this right.

A government is said to have the right to rule over a particular geographic area, over a particular set of people, when the following conditions obtain:

- It is morally permissible for it to create and enforce laws, rules, policies, and regulations for those people in that area.
- Certain people (citizens, residents, visitors, etc.) have moral obligations to abide by the laws, rules, policies, and regulations of the government, *because* the government issued those rules.<sup>2</sup>

When the first condition obtains, a government is said to be legitimate. When the second condition obtains, a government is said to have authority.<sup>3</sup>

By definition, a government is legitimate just in case it is permissible for that government to stand and to create, issue, and coercively enforce rules. By definition, a government is authoritative (or "has authority") over certain people just in case those people have a moral duty to obey that government's laws, edicts, and commands. Legitimacy is the thing that it supposed to make it okay for the police to

arrest you. Authority is the thing that is supposed to make it wrong for you to resist them when they try to arrest you. In short, *legitimacy* refers to the moral permission to coerce, while *authority* refers to a moral power that induces in others a duty to submit and obey.<sup>4</sup>

Note that these are just the definitions of the terms. In defining them, I take no stance on whether any governments are or could be legitimate or authoritative, nor have I said anything substantive yet about what, if anything, would make governments legitimate or authoritative. An anarchist and a statist can both agree that a state has legitimacy just in case it may permissibly create and enforce rules, although the anarchist and statist disagree about whether any states are in fact legitimate. Two different statist can agree that a state has legitimacy just in case it may permissibly create and enforce rules, but then disagree about exactly what it takes for a state to be legitimate.

Importantly, for a government to have authority, it must be able to *create* obligations where there were none, or at least create an additional source of obligation. By definition, if government has authority over a person, then when the government commands that person to do something, they have a moral duty to do it because the government says so. So consider that I have a preexisting moral duty not to rape. My government also forbids me to rape. Yet the reason I must not rape is not because my government forbids me to rape. Even if the government gave me a “license to rape,” I would still have a duty not to rape. The government did not create my moral duty not to rape, and it lacks the power to relieve me of that duty.

On the other hand, my government also commands me to pay it various taxes. Here, if I have a duty to pay, this duty exists only because my government created it. If the government rescinded the command, the duty to pay would disappear.

I argue below that a presumptive condition of the right to rule is that political decisions must be made competently by competent bodies, or those decisions are otherwise presumed illegitimate and nonauthoritative. Presumptive conditions are similar to but weaker than necessary conditions. Having some property P is a necessary condition for having some property Q when the failure to have P makes it impossible to have Q. In contrast, having P is a presumptive condition for having Q when the failure to have P indicates the

failure to have Q, unless defeated or outweighed by countervailing conditions. Presumptive conditions are defeasible; necessary conditions are not.

For my purposes in this book, I need only argue for the relatively weak claim that competence and good faith are at least presumptive conditions of the right to rule. To claim that they are necessary conditions would impose a greater argumentative burden on me than I need to defend my thesis.

I will sometimes talk about people having a right not to be subject to incompetent governments that rule in bad faith. Here again, I mean only to assert that this is a presumptive versus an absolute right. For the purposes of this book, I remain agnostic about whether this right is stronger than a presumptive right. Again, the reason I don't take a stronger stance is that my argument doesn't require it. In philosophy, we use the least controversial and weakest premise we need to get the job done. One doesn't argue "always" when "generally" will do, and one doesn't maintain "this is wrong no matter what" when "this is presumed wrong unless there's a good reason to do it" will do.

### THE RIGHT NOT TO BE SUBJECT TO AN INCOMPETENT, BAD FAITH JURY

Before talking about democracy, let's start by thinking about what it would take for juries to be legitimate and have authority. Most people believe that defendants have a right to a competent jury that acts in good faith. Let's take a look at *why* defendants might have such a right.

Imagine there are five different juries, each of which hears a complicated capital murder trial. Imagine each jury suffers from some defect, and then consider whether it seems justifiable to impose the jury's decision on the defendant.

The first jury is *ignorant*. During the trial, these jurors ignore the evidence presented to them. When asked to deliberate, they refuse to read the transcript. Instead, they flip a coin and find the defendant guilty of first-degree murder. After the trial, they admit they decided the case in ignorance.

The second jury is *irrational*. Its members pay attention to the evidence presented at the trial. These jurors, however, evaluate the

evidence in cognitively biased, nonscientific, or even antiscientific ways. Perhaps they subscribe to bizarre conspiracy theories. Perhaps they decide on the basis of wishful thinking. Maybe they just routinely miscalculate the weight of evidence, coming to the opposite conclusion of what the evidence supports. They find the defendant guilty. After the trial, they describe to us their thought processes, such that it is obvious they processed the evidence irrationally.

The third jury is *impaired*. The jurors here try to pay attention to the evidence and process the information scientifically, but they are simply not competent to do so. Perhaps they are cognitively impaired or the case is too complicated for their mental capacities. They find the defendant guilty. After the trial, they admit that, try as they might, they did not understand the case.

The fourth jury is *immoral*. These jurors pay attention to the evidence and evaluate it in a scientific, rational way. Yet they decide to find the defendant guilty because the defendant is black, Jewish, Republican, or whatnot, and they dislike people like that. Or suppose they believe the defendant is innocent, but find them guilty merely because they like to see innocent people suffer. After the trial, they admit that this is how they decided that case.

The fifth jury is *corrupt*. The jurors pay attention to evidence and evaluate it rationally. Nevertheless, they find the defendant guilty because someone paid them each ten thousand dollars to do so. After the trial, we learn that such bribery occurred.

Now ask, May we *enforce* the juries' decisions in these cases? Should the defendant submit to their authority?

It seems not. In each case, the jury acts badly, and everyone knows it. Intuitively, it seems that these jury decisions lack authority and legitimacy. If a defendant knew they had been subject to one of these juries, they would have no moral obligation to regard their decisions as authoritative. That the jury found the defendant guilty provides in itself no reason for them to accept punishment. (Of course, if the defendant did in fact commit the crimes, they would have independent reasons for submitting to the punishment.)

It would also be unjust for a government to enforce those decisions. The defendant is presumed free until conclusive reasons arise for interfering with their liberty. That any of one these juries found

them guilty offers no such reason. The defendant is presumed free unless deprived of their freedom by due process. In this case, they did not receive due process.

In the United States, the law to some extent follows these moral judgments. If a defendant is found guilty, but it is later discovered that the jury acted incompetently or with prejudice in certain ways, then the defendant can appeal.<sup>5</sup> In addition, the presiding judge can override the jury's guilty verdict on the spot if they believe that no reasonable jury could have arrived at that verdict. Judges rarely do so, but in principle, they can.

What explains our moral judgments in these cases? In a jury trial, the following features obtain:

- The jury is charged with making a morally momentous decision, as it must decide how to apply principles of justice. It is the vehicle by which justice is to be delivered. It has special duties to administer justice.
- The jury's decision can greatly affect the defendant's and others' life prospects, and it can deprive the defendant of life, liberty, and/or property.
- The jury is part of a system that claims sole jurisdiction to decide the case. That is, the system claims a monopoly on decision-making power, and expects the defendant and others to accept and abide by the decision.
- The jury's decision will be imposed, involuntarily, by force or threats of force.

These seem to be good grounds for holding that juries have strong duties toward defendants, and also that the jury's legitimacy and authority depends on its discharging these duties.<sup>6</sup>

The four features above are grounds for accepting the competence principle. As applied to juries, the competence principle holds the following:

Defendants and other citizens have a right that jury decisions should be made by competent people, who make their decisions competently and in good faith. It is unjust, and violates a citizen's

rights, to forcibly deprive a citizen of life, liberty, or property, or significantly harm their life prospects, as a result of decisions made by an incompetent jury, or decisions made incompetently or in bad faith.

One justification for the competence principle is that it is unjust to expose people to undue risk. In the cases above, the jurists are acting negligently toward the defendant. From the defendant's point of view, a jury's decision is momentous and the outcome is imposed involuntarily. In those kinds of cases, a jury has an obligation to take adequate care in making its decisions.

To see why, consider some parallel cases. Suppose I have severe bronchitis. My physician consults a witch doctor for treatment advice. The witch doctor burns some animal fat, then tosses in some alphabet soup, and reads the patterns of letters. By chance, the letters spell out a drug, which my physician then prescribes to me. Regardless of whether the drug ends up being the right (e.g., prednisone) or wrong one (e.g., moxonidine), the physician has done something wrong. The physician used a highly unreliable decision method to arrive at their prescription. Using this method puts me at serious risk of harm. If the physician had the power to *force* me to take the drug (just as juries have the power to force their decisions on defendants), this would be intolerable.

The competence principle implies the following, *pro tanto*:

- In order to sit as a jury, the jury as a collective body must not have bad epistemic and moral character.
- And even if a jury is competent overall, if a particular decision is made incompetently or in bad faith, that decision should not be enforced, and defendants have no duty to submit to that decision.

In short, the competence principle requires each jury decision to be made competently by a competent group. Let's further unpack just what this means.

*Regarding the first condition:* Suppose most juries are competent, but the particular jury that decided this trial is not. We could not justify enforcing this particular jury's decision simply by pointing

out that most *other* juries are competent. That's irrelevant. We cannot deprive a defendant of liberty, property, or life on the basis of an incompetent decision just because *other* juries are competent. Imagine saying, "Sure, we know *your* jury was bribed or insane, but all the other juries in the world do a great job. So the decision stands."

*Regarding the second condition:* Suppose this particular jury is usually competent, but was incompetent in this specific case. Suppose the same panel of jurors hears a hundred cases. It decides ninety-nine cases in a rational, well-informed, and morally reasonable way, but decides one last case in an irrational, ignorant, misinformed, and/or morally unreasonable way. Suppose they find the defendant in this last case guilty. We could not say to this defendant, "Sure, the jury was incompetent in your case, but it was competent in the other cases. Thus, we will enforce its decision and you must submit to it." The defendant could object, "It sure is nice that those jurors did such a good job with all those *other* trials, but this is *my* life and *my* freedom you're talking about. The jury decided *my* case in an incompetent and unreasonable way." The defendant's objection seems to me to be decisive.

The competence principle does not claim that juries have authority and legitimacy only when they make *correct* decisions. Instead, it claims that juries lack authority and legitimacy when they reach answers in unacceptable ways, regardless of whether their answers are correct or not. The competence principle does not disqualify jury decisions on the basis of their substantive content. It disqualifies jurors based on their bad moral or epistemic character, and disqualifies individual jury decisions based on the kind of reasoning (or lack thereof) the jury used to arrive at its decision.

### GENERALIZING THE COMPETENCE PRINCIPLE

The competence principle appears to have a broad scope of application. There doesn't seem to be any reason to think it applies only to juries. Individual government agents, branches, bureaucracies, and administrations along with the government as a whole can also deprive citizens of life, liberty, and property. Like juries, they have the power to cause great harm. Like juries, they also claim sole jurisdiction and



the right to rule. And like juries, they impose their decisions on (potentially) innocent people who do not consent to these decisions.

If a police officer, judge, politician, bureaucracy, or legislative body makes a capricious, irrational, or malicious decision, a citizen cannot just walk away.<sup>7</sup> Government decisions tend to have these crucial features:

- Governments are charged with making morally momentous decisions, as they must decide how to both apply principles of justice and shape many of the basic institutions of society. They are one of the main vehicles through which justice is supposed to be established.
- Government decisions tend to be of major significance. They can significantly harm citizens' life prospects, and deprive them of life, liberty, and property.
- Governments claim sole jurisdiction for making certain kinds of decisions over certain people within a geographic area. Governments expect people to accept and abide by their decisions.
- The outcomes of decisions are imposed involuntarily through violence and threats of violence.

Governments do more than choose melodies for national anthems and flag colors. They make policies and choose courses of action that can have momentous and even disastrous consequences for citizens. If the Federal Reserve, for example, pursues deflationary monetary policies while the US government imposes high trade barriers, this can push a recession into a deep depression. If military leaders inflate or misrepresent military intelligence, we might fight a costly, destructive, and inhumane war.

In light of the four features just noted, citizens have at least as strong grounds as defendants to expect competence from government officials and decision makers as a matter of right. This can be expressed in a generalized form of the competence principle:

It is presumed to be unjust, and to violate a citizen's rights, to forcibly deprive a citizen of life, liberty, or property, or to significantly harm their life prospects, as a result of decisions made by

an incompetent deliberative body, or decisions made in an incompetent way or in bad faith. Political decisions are presumed legitimate and authoritative only when produced by competent political bodies in a competent way and in good faith.

Presumptively, just as defendants have a right not to be subject to incompetent jury trials, innocent people have a right not to be subject to incompetently made political decisions. If the legitimacy and authority of jury decisions at least presumptively depend on competence and good faith, then so do the legitimacy and authority of all government decisions. If the legitimacy and authority of the jury system as a whole depends on juries typically being reliable and acting in good faith, then we should say the same about other government branches, administrations, and practices.

We have, in some respects, even stronger grounds for demanding competence and good faith from other governmental decision makers than we do from juries. After all, there is a philosophical puzzle about how to describe the rights of defendants. Many people on trial have in fact committed the crimes they are charged with, and it is tempting to say that they thus deserve punishment or may have already forfeited some of their rights. The defendants know that some of their rights have been forfeited, so for them to demand competence is just to demand that juries take care in determining what the defendants themselves already know. Some philosophers might therefore claim that the jury does not necessarily owe the defendant competence and good faith. Instead, the jury has a fiduciary duty to their fellow citizens to administer justice competently and in good faith. Others might contend that even if the defendant is guilty, they retain a moral right of due process that the law should instantiate. Still others might insist that the competence principle should be understood as a prophylactic against government abuse.

At any rate, while there is a puzzle about how to portray the rights of possibly guilty defendants, we have no such challenge when thinking about the rights of citizens. Most citizens are innocent and have forfeited none of their rights. They retain the strong liberal presumption against coercive interference of any kind. They retain the strong presumption that evils not be visited on them. As such, the

average citizen is in a stronger position than the average defendant to demand competence.<sup>8</sup>

### APPLYING THE COMPETENCE PRINCIPLE TO THE ELECTORATE

On its face, the competence principle applies equally well to the electorate as to juries. Consider these five hypothetical electorates:

*Ignorant electorate:* The majority of voters pay no attention to the details of the election or the issues at stake. During the election, they choose a particular candidate at random.

*Irrational electorate:* The majority pays some attention to the details of the election and the issues at stake. At the same time, they vote not on the basis of evidence but rather on the basis of wishful thinking and various disreputable social scientific theories they happen to believe without justification.

*Impaired electorate:* The majority pays attention to the details of the election and the issues at stake. Most of the discussion nevertheless is beyond their level of comprehension, requiring more intelligence than they in fact have. Still, they choose one candidate over the others, with no real clue what effect that will have.

*Immoral electorate:* Out of racism, the majority chooses a white candidate over a black one. Or, out of superficiality, they choose the better-looking candidate.

*Corrupt electorate:* The majority of voters choose a policy in their own self-interest, even though the policy severely harms or has a serious risk of imposing harm on the minority.

Suppose, in each of these cases, the majority does not represent everyone in society. For example, there might be some well-informed, rational, and morally reasonable minority voters, or innocent non-voters such as children or resident aliens. If so, then majority voters have done something deeply unjust: they have imposed a ruler (and whatever policies come from that ruler) on innocent people without having adequate grounds for that decision.

There are a few points to remember here. First, as I discussed in chapter 2, if voters tend to be ignorant, irrational, or morally

unreasonable, this not only tends to result in bad choices at the polls but also to make it so that the candidates on the ballot are of bad quality. The quality of the candidate pool itself depends significantly on the quality of the electorate. Second, as I explored in the introduction, we can't just say that the "electorate is only hurting itself." Political decisions are imposed on everyone, including dissenting voters, nonvoters, innocent children, immigrants, and foreigners.

Just as defendants have at least a presumptive right not to be exposed to bad juries, the governed have at least a presumptive right not to be exposed to undue risk in the selection of policy or of the rulers who will make policy. When elections are decided on the basis of unreliable epistemic procedures or unreasonable moral attitudes, this exposes the governed to an undue risk of serious harm. Since the governed are *forced* to comply with the decisions of the electorate, negligent decision making is intolerable. The electorate has an obligation to the governed not to expose them to undue risk.

In democracies, the ultimate holders of power are voters. If voters are systematically incompetent, as a collective entity, the consequences can be dire. We should not understate the damage bad voting can do. Bad voting can be and has been disastrous. Even if in the United States or United Kingdom disastrous candidates rarely have a chance of winning, we should not forget that many disastrous candidates have been elected to power in other parts of the world. The voters who put the National Socialists in power in Germany in 1932 cannot be held responsible for everything their government did. But much of what their government did was foreseeable by any reasonably well-informed person, and so their supporters were blameworthy. More recently, Venezuelan and Greek citizens are blameworthy for supporting politicians with terrible ideas about economic policy.

It's crucial to remember that the competence principle applies to *individual* political decisions. With that in mind, we need to distinguish between the following:

*Electoral decisions:* Whom or what the electorate chooses during the election.

*Postelectoral decisions:* What elected officials, bureaucrats, judges, and other government officials do after the election.

The competence principle says that every individual high-stakes political decision ought to be made competently and in good faith by what is generally a competent decision-making body. It might turn out that in modern democracies, because voters are systematically incompetent, most electoral decisions violate the competence principle. Yet despite that, it may also turn out that many postelectoral decisions are made competently. If so, then the competence principle says that the (incompetent) electoral decisions are unjust, but it does not thereby condemn any of the competently made postelectoral decisions. The competence principle doesn't imply any sort of "contamination theory." That is, it doesn't follow that if a prior or upstream decision violates the competence principle, all subsequent or downstream decisions are for that reason invalidated.

As an illustration, imagine that as a matter of fact, your Aunt Betty would be the best possible president. But suppose no one knows this or has any reason to believe it. Aunt Betty leads a quiet, nonpolitical life, and there is no publicly available evidence that she would make a good president. Suppose that radio personality Howard Stern organizes a campaign to get Betty elected, purely as a giant practical joke. (Stern and everyone else thinks Betty would be a bad president, but they don't care. They think supporting her is funny.) Imagine Stern is successful; Betty ends up winning, even though all her supporters believe she'll be incompetent. Fortuitously, though, Betty turns out to be the best president ever.

In this case, the competence principle says that what the voters did was wrong, but it doesn't thereby condemn any of Betty's decisions as president. The decision to make her president was unjust, although it fortuitously turned out to have good consequences, but her subsequent decisions as president are not rendered unjust.

If that seems puzzling to you, compare this again to a medical case. Suppose you go to a medical doctor. They use improper methods to diagnose you. They open a can of alphabet soup and dump it on the floor. The letters spell out "CANCER," and so they conclude you have cancer and send you to the Cancer Treatment Centers of America (CTCA). Fortuitously, you do in fact have cancer, and the CTCA is the best place for you to go. The CTCA provides excellent treatment, and you are cured. In this case, it seems that what your original

doctor did was wrong—they violated their duty of care toward you. Although the original doctor acted badly, it doesn't follow that anything the CTCA did was wrong or in some way contaminated by the first doctor's bad decision-making method. Their treatment decisions were made competently, with appropriate care and good faith.

Hence, to be clear, I am not arguing that if the electorate makes a series of incompetent decisions during the election, everything a democratic government does between then and the next election is incompetent, unjust, or in violation of the competence principle. Despite incompetent voting at the polls, we might still get many good policies after the election.

In the next chapter, I'll examine a range of reasons to think that democracies often produce good results even though the electorate is incompetent. Although most voters are ignorant and irrational, it may turn out that many or even most postelectoral decisions made in modern representative democracies comply with the competence principle.

Some democratic theorists contend that the electorate as a whole tends to be competent even though most individual voters are incompetent. In chapter 7, I'll show that these arguments fail. There are more promising claims on behalf of democratic competence, however. In particular, there's good reason to think that democracies tend to make good decisions in large part because the electorate does not get in its way. Politicians, bureaucracies, and judges frequently ignore or override voters' expressed preferences. High-information voters appear to have disproportionate influence when compared to low-information voters, and this may reduce some of the potential harms from voter incompetence. Not everything that happens in government is a direct or indirect result of voters' behavior.<sup>9</sup>

Still, voting does make a difference. In general, the lower the epistemic and moral quality of the electorate, the worse governmental policies will tend to be. Whom the voters select as a leader does make a significant difference.

This concludes the basic argument for the competence principle. When high-stakes decisions are imposed on innocent people, the competence principle requires every individual decision to be made competently and reasonably by competent, reasonable people. It applies

not merely to jury decisions but also to any significant decision made by those holding political power.

### WHAT COUNTS AS COMPETENCE?

I've maintained that people have a presumptive right not to have incompetently made high-stakes decisions forced on them, but I have not yet tried to outline a theory of what exactly counts as competence. In political philosophy, we don't attempt to settle a debate unless we have to. As far as I can tell, for my argument to go through, I need rely only on relatively uncontroversial platitudes about competence. It's not clear I need to defend a precise theory of political competence. After all, even if it's difficult to determine where precisely to draw the line between political competence and incompetence, it may be easy to show that democratic voters as a whole are on the wrong side of that line.

To demonstrate why, I'll draw on the related literature on competence in medical ethics. One of the major issues in medical ethics is whether patients are competent to make decisions for themselves. Doctors are supposed to allow patients to decide for themselves what treatments to pursue, and may overrule patients' expressed decisions only if the patient is incompetent. Jillian Craigie says that the "standard criteria for competence" are as follows:

- Patients must be aware of the relevant facts.
- They must understand the relevant facts.
- Patients must appreciate the relevance of those facts for their own particular case.
- Patients must be able to reason about those facts in an appropriate way.<sup>10</sup>

People will reasonably dispute how to fill in all the details of these four criteria, but in the abstract they seem unobjectionable. Indeed, these four criteria appear to be the same ones we'd use to assess competence over any matter, not just medical decisions.

We'd apply these same criteria to assessing whether a doctor was competent to treat you. A doctor must be aware of the relevant facts.

We wouldn't say a doctor is competent to treat you if they know nothing about your medical history or symptoms. The doctor must also *understand* the facts. Suppose you experience severe shortness of breath. You tell your doctor you have asthma, and they respond, "OK, got it. So there's this condition called asthma, and you have it. I don't personally know what asthma is, but it sounds bad. Is it?" This doctor is not competent to help you. A doctor must also be able to appreciate the relevance of the facts for your case. Suppose you tell a doctor that your stool is a bright fuchsia, and you're worried about whether you have internal bleeding. Imagine you also tell the doctor that you've eaten nothing but red Jell-O and beets for the past three days. The doctor should see that this might explain why your stool is red. Finally, a doctor must be able to reason about your case in an appropriate manner. Suppose the doctor understands all this, but decides to give you an MRI after consulting a Ouija board. Again, the doctor acted incompetently.

Or suppose you hired a plumber to fix your clogged pipes. What counts as a competent plumber? To know exactly what makes a plumber competent, you'd have to know plumbing. I presume plumbers disagree about some hard cases—say, whether certain apprentice plumbers qualify as competent or not. Still, the abstract criteria for assessing plumbing competence are simple. We expect a competent plumber to be aware of the facts of the case at hand, understand what those facts mean, understand how to apply those facts to determine what to do, and reason about the facts in an appropriately rational way. So if a plumber saw that your pipes were clogged and concluded that they needed to mow your grass in order to fix the clog, they'd be incompetent. If they understood that the pipe was filled with hair, but then had no idea why this would stop water from going through, they'd be incompetent. If they thought the best response to the clog was to pray for the plumbing gods to intervene, the plumber would be incompetent. And so on.

We'd use these same four criteria to determine what makes a jury competent. A jury must be aware of the relevant facts. So, for instance, if the jurors didn't know that the defendant was left handed, but the victim appeared to have been stabbed by the attacker's right hand, then the jurors aren't likely competent to decide the case. They



must understand the facts. If, for example, the jurors didn't understand what *handedness* means, then they aren't likely competent to decide the case. They must understand the relevance of those facts for the case. So if jurors knew the aforementioned facts, but didn't realize that the fact that the victim was stabbed by a right hand casts doubt on whether the defendant attacked the victim, they aren't competent to decide the case. The defendants must also be able to reason in an appropriate way. If the weight of the evidence suggests there is strong doubt that the defendant is guilty, but the jurors find them guilty just because they just want *someone* to be punished, then they acted incompetently.

In chapters 2 and 3, I examined at great length facts about what voters know and don't know, about why and how they form political beliefs, about how they respond to new information, and about how they make decisions. In light of that, it looks like the electorate is straightforwardly incompetent. Candidates run on policy platforms and policy bents. Most voters are ignorant or worse about the facts. They lack the knowledge of basic civics, recent history, candidate platforms, what powers different offices have, and the social science needed to assess candidates' performance or proposals. They don't know who the incumbents or challengers are, what the incumbents or challengers want to do, what they have the power to do, and what is likely to happen if these candidates get their way. Most voters make decisions about politics in irrational, capricious ways.

Now some might say that democracies perform better than many other systems. Indeed, they tend to do so. Democracies tend to have peaceful transitions of power, tend not to engage in the mass murder of civilians, and rarely experience famines. That might make them better than autocracies, but that doesn't suffice to show that in most elections, the electorate behaves competently.

After all, suppose I describe two medical doctors to you. One of them is a hack who wants to help their patients, but who regularly prescribes them the wrong medicine. The other is a jerk who doesn't care about their patients, regularly takes advantage of them, and even murders them when they feel like it. The first doctor might be better overall than the second, yet that doesn't suffice to make them competent.

A moderate position on democratic competence might hold that voters should do the following:

- Voters should act on widely available, good information, if not always the best information available anywhere.
- They should avoid mass superstition and systematic error.
- They should evaluate information in a moderately rational, unbiased way—if not with the perfection of a vulcan, at least with the degree of rationality a first-year college student brings to thinking about introductory organic chemistry.
- Voters should be aware of their limits, and thus always look for more and better information on any high-stakes decision.

As we've seen, most voters fail to live up to even this moderate set of criteria. Most voters overestimate themselves. They either don't seek out information or only seek out information that reinforces whatever beliefs they already hold for nonrational reasons. Collectively, they do have mass superstitions and make systematic errors. And finally, voters don't know how little they know.

It also may be that the reason democracies outperform autocracies is not because the electorate is competent but instead because the electorate's power is greatly limited. I'll discuss this point further in the next chapter.

## COMPETENCE IN CONTEXT

So far, I have argued that universal suffrage, as practiced in contemporary democracies, tends to violate the competence principle. I have not yet made any positive policy proposals in light of this point.