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SELF-GOVERNMENT IN A REPUBLIC OF 325 MILLION!

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INTRODUCTION

The presidential campaign trail of 2016 still echoes with paeans to self-government—to the American people rising up to take *our* government back from those *other* people who have been making such a mess of things. For example, in announcing his presidential bid in Virginia, Senator Ted Cruz declared of ordinary Americans: “This is our fight. The answer will not come from Washington. It will come only from the men and women across this country, from men and women, from people of faith, from lovers of liberty, from people who respect the Constitution.”² He later echoed a similar sentiment: “Here is the truth: You don’t need me or any politician.”³

1. This is a condensed version of the author’s original manuscript of an article later published in *Perspectives on Political Science* on Oct. 30, 2018 (copyright Taylor & Francis, print version forthcoming 2019). Available online at: <https://www.tandfonline.com/doi/full/10.1080/10457097.2018.1514906>.

2. Ted Cruz, “Remarks Announcing Candidacy for President at Liberty University in Lynchburg, Virginia,” March 23, 2015. <http://www.presidency.ucsb.edu/ws/?pid=109774>.

3. Ted Cruz, “Remarks in Philadelphia, Pennsylvania: America Is at a Point of Choosing,” April 19, 2016. <http://www.presidency.ucsb.edu/ws/index.php?pid=117232>.

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Likewise, announcing his candidacy from his native Detroit, Ben Carson sounded a similar theme: “I think it is time for the people to rise up and take the government back [...] We, the people are the rulers of thought in this nation. We get to determine what kind of nation we have. Other people cannot dictate that for us. We need never allow anybody to take the right away from us.”⁴

At the other end of the political spectrum, Senator Bernie Sanders told Iowans he was beginning “a political revolution,” in which “young people and working people and seniors begin to stand up and say loudly and clearly ‘Enough is enough!’ That our government—the government of our great country belongs to all of us and not just a handful of billionaires.”⁵

And finally, in his inaugural address, even our billionaire president-elect himself ran with the theme:

What truly matters is not which party controls our Government, but whether our Government is controlled by the people. January 20, 2017, will be remembered as the day the people became the rulers of this Nation again. The forgotten

4. Ben Carson, “Remarks Announcing Candidacy for President in Detroit, Michigan,” May 4, 2015. <http://www.presidency.ucsb.edu/ws/index.php?pid=110076>.

5. Bernie Sanders, “Remarks in Des Moines Following the Iowa Caucus,” Feb. 1, 2016. <http://www.presidency.ucsb.edu/ws/index.php?pid=111440>.

men and women of our country will be forgotten no longer. Everyone is listening to you now.⁶

From all of these speeches, it would seem that self-government—the idea that government in all aspects must emanate and draw its authority from “the people themselves”—is highly prized by America’s citizenry as the central feature of our political life.⁷

But, to use a technical philosophical term: Is all of this just so much bullshit?⁸ That is, are these just the kind of rhetorical tunes that Americans like hearing, irrespective of their relationship to any meaningful reality? After all, Americans may want their high office-holders to flatter them with pieties about the power of the people—running against Washington is, by now, a venerable tradition in American politics—but collectively, our desire to exercise that power is mostly rather flaccid. Moreover, our willingness to invest our time and energy in knowing about the affairs of state, such that we might responsibly influence the debates of the day, is downright miniscule.

Evidence to support these propositions has never been more abundant. An enormous political science literature developed over the last half-century establishes that the average American knows shockingly little about current national politics and is likely to have rather murky views about which policies are desirable. But people do have political predilections in favor of one party (or sharply against another), and they tend to reason outward from this: where they have a strong view, they tend to believe their party shares it, whether true or not; where they do not have a strong instinct, they are likely to take instruction from their party.⁹

Given this starting point, it is perhaps unsurprising that most Americans do little to directly engage national politics. American voter turnout is among the lowest in the developed world, the majority of Americans are wholly disconnected from politics in a given year and a growing portion of the political activity that does occur falls into the category

of online emoting.¹⁰ As much as Americans like to say they would govern differently and better than their professional politicians and bureaucrats, then, as a whole they do not do much to prove it.

And why should we expect anything different? After all, we have given ourselves over to specialization and the division of labor across nearly the whole range of our activities. We complain about slow airplane boarding processes and rough landings but we do not expect people to start learning about what it takes to run an airline or fly a jet. We protest high produce prices but we are not surprised that people have next-to-no concrete ideas of the costs of fertilizing, growing, picking or transporting our peaches or avocados to market. And we may curse our smartphone providers when our devices make ceaseless demands to update themselves but that hardly means we have any real sense of the coding and cybersecurity imperatives behind these technologies. Indeed, our lives are full to the brim with things we do not understand and this basic fact is one of the defining features of modern life.¹¹

And given that this is the case, why would anyone think modern citizens would somehow make serious investments in understanding how banks should be regulated or how tax exemptions should be configured or what kind of curricula our schools should use? To be sure, those we vote into office are charged with settling these matters—but the causal connection between one person’s vote and the substance of policies is so attenuated as to be imperceptible (if not wholly fictitious).

In light of this, perhaps self-government is not much different from autarky or self-reliance—values with powerful intuitive appeal but little value in the modern world as it currently exists. Maybe government just is not actually that different from “the market” when it comes to these questions.

Such a logical conclusion is simply unacceptable to many. Our inherited ideas about self-government make us think that division of labor applies in the private realm but surely must be irrelevant to the public one. Our Constitution instantiates a highly stylized division of labor meant to ultimately empower and serve “the People” but by preserving a pre-eminent place for elected representatives who possess no specialized knowledge, it clearly limits just how specialized and removed from the public the exercise of public authority can be.

6. Donald J. Trump, “Inaugural Address,” Jan. 20, 2017. <http://www.presidency.ucsb.edu/ws/index.php?pid=120000>. It should be noted that this was a very different tone than Trump adopted when he accepted the Republican nomination, declaring: “Nobody knows the system better than me, which is why I alone can fix it.” See, “Address Accepting the Presidential Nomination at the Republican National Convention in Cleveland, Ohio,” July 21, 2016. <http://www.presidency.ucsb.edu/ws/index.php?pid=117935>.

7. *The Federalist Papers* Nos. 39, 40 and 78 (among others).

8. See, e.g., Harry Frankfurt, *On Bullshit* (Princeton University Press, 2005).

9. See, e.g., Christopher Achen and Larry Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton University Press, 2016), pp. 21-51.

10. Aaron Smith, “Civic Engagement in the Digital Age,” Pew Research Center, April 2013. <http://www.pewinternet.org/2013/04/25/civic-engagement-in-the-digital-age>. See also, Eitan D. Hersh, “Political Hobbyism: A Theory of Mass Behavior,” Working Paper, June 2017. http://www.eitanhersh.com/uploads/7/9/7/5/7975685/hersh_hobbyism_june2017.pdf.

11. For a useful exploration of this idea with a focus on modern information technology, see David Weinberger, *Too Big to Know* (Basic Books, 2014).

Accordingly, the thrust of this study is to consider whether such a privileging of generalists makes sense in our modern America, 325 million citizens strong.¹² The way that our administrative state has grown up along with the nation seems to suggest it does not. As government has acquired more functions, more policies have effectively become the province of bureaucratic specialists. The role of generalist legislators has receded. One may reckon this development welcome or pernicious but either way, there is a sense that it is somehow inevitable; a simple function of economic and technological development and population growth.¹³ Is that feeling of inevitability misguided? Or is it correct, and does it render our constitutional structure unfit for the modern world?

The present study argues that a middle way is possible. On one side, the extension of specialization in government is irreversible and certainly linked to largely beneficial trends, making it folly to strive for citizen self-government in any literal sense. Short of civilizational collapse, the government of simpler times will not be returning.¹⁴ On the other side, there are serious downsides to specialization of public functions that must be vigilantly attended to by generalists. Representative government as instantiated in a strong legislature is our best chance at some kind of meaningful self-government and it should be defended as such. As we have inherited it, the Constitution is a major resource for this defense—at least if Congress can be made to play its intended role. Realizing limits on the executive and judicial branches through an assertion of Congress’s constitutional prerogatives would therefore be the best way to serve the cause of self-government in America today.

PUBLIC AND PRIVATE DIVISION OF LABOR

Ultimately, to justify such an approach, it is necessary to first consider whether and how the division of labor ought to be thought about differently in the public and private realms. This is a surprisingly neglected question in contemporary political philosophy, perhaps because it seems like a question of economics. Given the tension between generalist self-government and the relentless march of specialization, however, it is difficult to work around.

12. On the relevance of this size, see Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (University of Chicago Press, 2000), Vol. I, Part One, Ch. 8, p. 151: “Human passions acquire intensity not only through the greatness of the goal they want to attain, but also through the multitude of individuals who feel them at the same time [...] In a great republic, political passions become irresistible not only because the object that they pursue is immense, but also because millions of men feel them in the same manner and at the same moment. It is therefore permissible to say in a general manner that nothing is so contrary to the well-being and freedom of men as great empires.”

13. See the discussion in Christopher DeMuth, “Can the Administrative State be Tamed?” *Journal of Legal Analysis* 8 (June 2016), pp. 121–90, esp. 157–62.

14. The immense popularity of post-apocalyptic stories in contemporary American culture shows how instinctively appealing the possibilities of truer self-government can be—even at the (imaginary) cost of civilization as we know it.

Suspicion of the Division of Labor in All Realms

Although it might seem convenient to do so, we cannot distinguish between private and public division of labor merely by saying that the latter is the kind of thing that people worry about. There is a long and distinguished, if perhaps currently somewhat languishing, tradition of worrying about the corruption of human virtue that goes hand in hand with the expansion of the division of labor in all its forms.

To take one distinguished exemplar, Thomas Jefferson thought that if the division of labor in our society proceeded to reduce the share of the population that made their living as landholding farmers, we would be inevitably corrupted. In his *Notes on the State of Virginia* (1787), he took up the question of whether Americans should seek to manufacture goods for themselves, as European economists generally believed, and answered emphatically in the negative:

Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue [... G] enerally speaking, the proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land to labour then, let us never wish to see our citizens occupied at a workbench, or twirling a distaff.¹⁵

For Jefferson, then, a domestic division of labor would lead to a spirit of dependence, urban masses insistent on favors from government and ultimately to a betrayal of the nation’s animating spirit of liberty.

In his *Sketches on American Policy* (1785), Noah Webster likewise expressed the earnest hope that America could resist this path of development because of its remarkable geography:

In countries thinly inhabited, or where people live principally by agriculture, as in America, every man is in some measure an artist—he makes a variety of utensils, rough indeed, but such as will answer his purposes—he is a husbandman in summer and a mechanic in winter—he travels about the country—he convenes with a variety of professions—he reads public papers—he has access to a parish library and thus becomes acquainted with history and politics, and every man in New England is a theologian. This will always be the case in America, so long as their [sic] is a vast tract of fertile land to be cultivated, which will occasion emigration from the states already settled.

15. Thomas Jefferson, *Notes on the State of Virginia* (1787), Query XIX. <http://xroads.virginia.edu/~hyper/hns/voeman/gxix.html>.

Knowledge is diffused and genius routed by the very situation of America.¹⁶

In Webster's view, the sprawling nature of the fledgling nation guaranteed that every man, in some form, would be a generalist, and this bulwark against specialization was to be welcomed.

This view was hardly confined to quirky Americans. Arguably, it has biblical roots.¹⁷ In modern political thought, a long line of thinkers drawing on Machiavelli, including Harrington, Montesquieu and Rousseau condemned the turning away from collective social life that is entailed by an extensive division of labor. If such specialization brought an abundance of material goods, this too was to be feared as introducing dangerous luxury into a republic. To the extent men made their lives in commerce and then paid for the protection of mercenaries, they were bound to have their characters softened and dulled. Even Adam Smith noted this worry.¹⁸ As Christopher Lasch explains, this tradition was continued in the 19th century by a coherent strain of populism "that condemned the boundless appetite for more and better goods and distrusted 'improvements' if they only gave rise to a more and more elaborate division of labor."¹⁹

Meanwhile, Karl Marx and many of the thinkers he influenced also saw the workings of the division of labor as a powerful source of human misery. Marx did not share the Jeffersonian nostalgia for farming, believing instead that the coming of bourgeois capitalism was a necessary step in the advancement of the human condition. But in the current stage of history, the capitalist class's control of the means of production necessarily leaves most people alienated from the products of their own labor. In other words, the division of labor as actually developed under capitalism is oppressive to human freedom and happiness. Individuals are turned into cogs in a machine that works to enrich owners, rather than realizing their full human and social potential.

Emile Durkheim, too, saw the development of the division of labor as an inexorable natural law. Unlike Marx, he was deeply ambivalent about its moral role in people's lives. Dur-

16. Noah Webster, *Sketches of American Policy* (1785), no. 29. <http://potowmack.org/Inoahweb.html>.

17. A discussion of the Bible's suspicion of city life and the artifice it entails can be found in: Leon Kass, *The Beginning of Wisdom: Reading Genesis* (University of Chicago Press, 2003), esp. Ch. 8.

18. In *The Wealth of Nations*, Book V, Ch. 1, para. 178, Smith worries that someone whose work is so specialized that it comes to "be confined to a few very simple operations" will have "no occasion to exert his understanding" and "naturally loses, therefore, the habit of such exertion, and generally becomes as stupid and ignorant as it is possible for a human creature to become." <http://www.econlib.org/library/Smith/smWN20.html#B.V.%20Ch.1.%20Of%20the%20Expences%20of%20the%20Sovereign%20or%20Commonwealth>.

19. Christopher Lasch, *The True and Only Heaven: Progress and its Critics* (W.W. Norton, 1991), pp. 15, 51 and 56.

kheim stresses the way that the division of labor is productive of some kinds of social solidarity between those people cooperating in increasingly interdependent economic relations but he also saw a danger of pathological over-specialization leading to mutual incomprehensibility, what he called an "anomic division of labor."²⁰

These general critiques of the division of labor are powerful, and one might make an interesting argument that they are unjustly neglected because of the larger failure of Marxism. But, if there are few prominent adherents of these ideas in recent times, it is probably also because there is something very anti-modern and anachronistic about them: people's lives in the age of globalization are interdependent in ways that would have been difficult for eighteenth-century agrarians to fathom and there seems little prospect that we will somehow untangle ourselves.²¹ Besides, contemporary Ludites have plenty of more urgent worries than that *people* will be too specialized, what with the robots coming for all our jobs.

Distinguishing Government as a Special Case

Perhaps the embrace of this brave new world is enough to put aside worries about the division of labor in the economic realm. Nevertheless, the intuition that government must be approached quite differently remains and is nicely illustrated by a scene from the Danish political drama *Borgen*, which features a dialogue between Katrine, the young superstar TV news anchor for Denmark's premiere news channel and her boyfriend, Benjamin, whom she met when he was working as a spin instructor at her gym. Katrine and her network colleagues are on the verge of breaking a scandal that may ruin the country's Justice Minister, Hoxenhaven, and Katrine is excitedly telling Benjamin about their exploits:

K: If we topple Hoxenhaven, we'll have champagne.

B: Who?

K: Hoxenhaven.

B: Who's that?

K: The Justice Minister. You know.

B: Not really.

K: Don't you know who the Justice Minister is?

B: Why is that so important?

K: He's the most talked-about minister at the moment.

B: I'm not really into politics. Don't be so serious.

K: It's a serious matter. You have to keep track of what's going on!

20. Emile Durkheim, *The Division of Labor in Society*, ed. Steven Lukes and trans. W.D. Halls (Free Press, 2014), pp. 277-92.

21. Even Tocqueville, writing in the 1830s, saw the inexorable march of the division of labor. Every man was bound to "believe a million things on faith in others," even though doing so "puts his mind in slavery; but it is a salutary servitude that permits him to make good use of his freedom." *Democracy in America*, Vol. II, Part One, p. 408.

B: I'm busy. I don't ask you to keep up on anaerobic burning of amino acids.

K: You can't compare the two. These are people who run the country.

B: Why is your world more important than mine?

K: It isn't...

B: But that's what you're saying.

K: No.

B: But that's what you mean.

K: Yes, that is what I mean! We tell people what's going on in the world. And you talk about spinning bikes!

B: Is that how you see it?

K: No. That's how it is, for God's sake!²²

Benjamin's wounded pride may be sympathetic—indeed, as Tocqueville argued, there is something in the human spirit “that reduces men to preferring equality in servitude to inequality in freedom,” and which thus takes umbrage at the idea that some people are mere spectators while others are meaningful participants in history.²³ Nevertheless, Katrine is simply right—to be a specialist in stationary bicycling is not as important as to be a key player in the central political drama of the day, which may determine who effectively exercises power in the country's leading political institutions. We therefore think that the latter functions must be accompanied by a qualitatively different form of accountability than the former.

In the age of the modern welfare state, government is largely a service provider and it is sometimes tempting to think of it as nothing more—albeit an especially sprawling one with a peculiar governance structure that makes it less responsive to customer demand than other, similar enterprises. When thought of this way, the whole notion that “government” is itself a distinct sort of creature may seem to dissolve: there is a social security administration that cuts checks, a national medical service administering claims and amplifying the influence of medical professional groups, bank regulators working as risk managers within financial-services firms and so on. As such, to focus on the network of experts and professionals that effectively set the standards and evaluate the performance of each of these activities is a far more effective way to understand them than trying to draw out some tenuous connection to voters.²⁴

And yet, the essence of the matter is hidden by this way of looking at things. When the State acts, it is not just like another business partner, given its (not-at-all-dormant) monopoly on the use of coercive force and its sovereign immunity. More

to the point, because the State notionally acts in the name of the country itself, the actions of its various organs are bound to tap into people's fundamental values in an unusual way. When United Airlines treats a passenger egregiously unfairly, it is one thing and indeed, there are private legal remedies available and competitors to choose in its stead. But if the IRS decides to badger some firm because it dislikes their politics, such an act can plausibly be interpreted as real persecution. And, if targeted groups develop persecution complexes and begin to think that the whole government is against them, this is at least understandable.

Whereas private specializations that go beyond the average citizen-consumer's understanding can be seen as basically benign, when (parts of) the government claim the need to exercise power in ways that are hard for regular citizens to understand, there is something inherently more threatening about it. Some very fundamental human sense of fairness generates a persistent worry that the makers and knowers of the rules will abuse their authority precisely because others do not know enough to hold them to account effectively. As Jeremy Waldron puts it, “The prospect of injustice thus accompanies the division of labor involved in the growth of technical law.”²⁵

Beyond that first-order risk of injustice, there is a governing risk posed by having policy made by people who are “too specialized” and therefore too clearly differentiated from the “regular” people to fit the metaphor of self-government. If government pursues ends not actually consonant with the desires of the people, its leaders are discredited in such a way as to engender disobedience and resistance. In part because of that resistance, government projects will end as conspicuous failures, further eroding trust.

Contemporary political scientists apprehend and frequently worry about one aspect of such a divergence: the lack of “preference congruence” between the public (the “principal”) and government (their “agents”). This is characteristically demonstrated by showing that public policies do not match up all that well with the opinions of the public as captured by polling. And, this is treated as a source of concern in and of itself. But the deeper threat, not captured by polling about specific policy questions, is that the people will decide that government's whole way of appraising what is valuable in the world has ceased to match theirs.

At that point, government may become impossible to realize in practice because people are fundamentally unwilling to treat the government's output as worthy of respect. As Walter Lippmann put it:

22. *Borgen*, produced by DR Fiktion (2010). Transcription by author from subtitles: S. 1, Ep. 7 (“Ikke se, ikke høre, ikke tale”), 41:00.

23. *Democracy in America*, Vol. 1, Part One, Ch. 3, p. 52.

24. This position is most enthusiastically argued by Edward Rubin in *Beyond Camelot: Rethinking Politics and Law for the Modern State* (Princeton University Press, 2007).

25. Jeremy Waldron, *The Dignity of Legislation* (Cambridge University Press, 1999), p. 14.

Government is *in* the people and stays there. Government is their multitudinous decisions in concrete situations, and what officials do is to assist and facilitate this process of governing [...] In the modern state a law which does not register the inward assent of most of those who are affected will have very little force as against the breakers of that law.²⁶

Self-government in this sense is merely tautological: it is a hard-sociological fact that the law in practice will be only what the people make of it. When government leaders are seen as legitimate and trusted, their visions can be realized; when they are viewed as alien and mistrusted, their efforts to realize their plans will often end in social strife and failure.

Most specialized economic actors have no need of a deep legitimacy because their exchange-relationship with their customers is thin by design. If customers appreciate their specialized output, they pay for it; if not, they take their business elsewhere. In Albert Hirschman's terms, theirs is a relationship defined largely by the possibility of *exit*.²⁷

Governments, and especially national governments, are in an entirely different position; they cannot simply invite citizens to leave when they dislike some policy output. They require *loyalty*, such that even unhappy citizens work through official processes to effect change rather than "opting out." As Hirschman points out, the ideal is well captured in the famous adage, "Our country, right or wrong!" The force of that sentiment comes from the sense of common control implicit in the possessive "our." If the government of the country no longer seems like "us," if it seems controlled by members of the rentier class or totally aloof experts who care little for our judgments, it cannot expect us to oppose its judgments through loyal voicing of our concerns. Instead it must come to expect "exit," likely in the form of low-level disobedience but sometimes, more dramatically, in the form of emigration or revolution.²⁸

Because our relationship with the state is so different from our relationships with commercial actors, our attitude about it must be different, too. We do not say: "Our grocer, right or wrong!" or "Our plumber, right or wrong!" The stakes are different, and so our thinking about accountability must be different. The question is: how exactly should ideas about self-government inform that thinking?

26. Walter Lippmann, *A Preface to Morals* (The MacMillan Company, 1929), p. 279. Emphasis added.

27. Albert O. Hirschman, *Exit, Voice, and Loyalty* (Harvard University Press, 1970).

28. *Ibid.*, p. 78. Hirschman points out that the full original quotation, from a toast by Commodore Stephen Decatur sometime after the War of 1812, makes even more clear the idea that loyalty depends on the ability to steer a better course: "Our Country! In her intercourse with foreign nations may she always be in the right; but right or wrong, our country!" "May she" clearly implies the possibility that she will not; the emphatic sense of possession implies that we will seek to ensure that she is.

REJECTING TWO EXTREMES: SELF-GOVERNMENT AS A REGULATING IDEAL

Put simply, we should cherish self-government as a regulating ideal or guiding principle; as a corrective to the strong tendencies toward ever-greater specialization at work in our government. We should see self-government as one thing worth fighting for—without mistaking it for the only thing or even one that we expect to win out in some decisive manner. This entails rejecting two extreme positions, both of which are discussed in detail below.

Literal Government by the People

The first extreme position comes from an unhealthy literalism: namely, assuming that self-government will really mean government by all of the people, all of the time. Some rather simple arithmetic reveals that this is impossible in a polity of anything like the size of a modern nation-state. A few moments of further reflection reveal that it is also a profoundly dystopian idea. And yet, the idea of "the people" far from Washington, wresting control of their government from the corrupted specialists now exercising power retains its rhetorical force, as evidenced by the pronouncements from the 2016 campaign trail.

The idea that self-government will deliver power directly into the hands of "the people themselves" is closely related to a central confusion about the word "democracy" that has shaped our political discourse. Because we refer to both ancient city-states and modern nation-states with representative governments as "democracies," we expect them to have a deep commonality in every citizen being actively engaged in the work of government. This image clearly resonates in the political thought of Jefferson and Lincoln, although they do not follow what the ancient Greek philosophers thought was the obvious correlate, which is that size itself is antithetical to democracy in this sense. As Robert Dahl and Edward Tufte argued in their classic *Size and Democracy*, "the poverty of our nomenclature" has left us with expectations about contemporary representative democracy that simply do not make sense, and has "introduced so wide a disparity, not simply between ideal and reality but between ideal and potential, as to generate false hopes, despair, and cynicism" about our modern systems of government.²⁹

Illegible Government by Experts

The other extreme we must reject is the idea that specialization should be treated as a moral imperative in government, such that all decisions are made by the experts most qualified to make them. As with the extreme of literal self-government, there is undoubtedly something rhetorically

29. Robert A. Dahl and Edward R. Tufte, *Size and Democracy* (Stanford University Press, 1973), pp. 25-26.

appealing about this position: who can object to rule by the most knowledgeable and qualified? And, in fact, something like this position wins the support of a surprisingly politically diverse coalition of intellectuals, including libertarians touting the virtues of “epistocracy” and scientists dreaming of a “Rationalia” “in which all policy shall be based on the weight of the evidence.”³⁰

In such visions, citizenship recedes almost entirely into passivity and the idea of self-government comes to seem as archaic as baronial estates bequeathed through primogeniture. All that is required of the conscientious citizen is a knowing faith in the virtues of the experts, which belief becomes a signifier of the rightness of one’s thought. As F.R. Ankersmit explains:

We recognize that the world is how the expert tells us that it is, congratulate ourselves with our self-righteous moral judgment of the world—and breathe a resigned sigh. Hence, to the degree that our society became ever more complicated and ever more the domain of the expert, it became an ever more attractive option to proudly advertise one’s noncommittal moral superiority.³¹

In other words, a complete embrace of specialization will tend to generate an attitude of thoroughgoing passivity, self-described as a willingness to “let the experts do their jobs.”

Although recently the ranks of those using “technocratic” as a morally noncommittal term of praise have been increasing, “technocracy” has generally been a pejorative term. The main reasons are obvious enough: most questions government faces cannot be decided through expertise; what constitutes expertise is itself a highly contested question; and, of course, experts do not always agree with each other and often find themselves embarrassed by actual events.

But, somewhat less obviously, technocracy also seems to be self-limiting precisely because of the balkanizing dynamics of expertise itself. Ankersmit further explains that expertise networks tend toward a kind of solipsism, in which their own domain is seen as all-important and information coming from outsiders is regarded as likely to be without value. This makes them myopic in practice and, much as fantasies about proper Platonic guardians tend to continually recur, there is

no “super-network” to harmonize the contributions of the existing expert networks.³²

Expert myopia continually produces disappointments when it is revealed that the authority of the experts is not what it was cracked up to be. These naked-emperor moments naturally create room for a reassertion of non-expert politics. Put another way, if experts’ governing legitimacy is only as good as their ability to skillfully and reliably manipulate the world, it will not be very durable, for the world has a way of making fools of us all sooner or later.

Balancing Specialization and Accountability

Once it is clear why the pursuit of either extreme must be avoided, the harder real-world questions come into focus: how should the need for division of labor and specialization in government be balanced with the idea that government must remain accountable to the people? How much are citizens willing to pay, either literally or through diminished administrative efficiency, for a government that is legible to its own citizens? Can accountability somehow be achieved through a further division of labor, such that accountability specialists look after the work of other specialists—and, if so, who watches the watchers?³³ To the extent that a role for generalists is preserved, what should it look like?

Of deliberating such questions, Ankersmit opines:

Our dilemma as human, or rather, as political beings may be that we shall always have to choose somehow between either an exact grasp of the detail or a conception of the whole [...] there is no way to combine the strengths of both in a view of the world that both respects the detail and is all encompassing. So, our only alternative is to decide for each individual case where we should situate the narrow optimum between these two mutually exclusive options.³⁴

There is no avoiding difficult tradeoffs. If generalist legislators demand that the inner workings of our national government be intelligible as a coherent whole, it will necessarily put them at odds with specialist experts.

REPRESENTATIVE GOVERNMENT AS A WAY OF SERVING IDEAL SELF-GOVERNMENT

All of these questions are essentially about institutional design and in the United States, our Constitution provides

30. On libertarians, and particularly Jason Brennan’s *Against Democracy*, see Philip Wallach, “The Rise of the Libertarian Technocrats,” *Law and Liberty*, Sept. 22, 2016. <http://www.libertylawsite.org/2016/09/22/rise-of-the-libertarian-technocrats>. The term “rationalia” was suggested by the famous astrophysicist Neil de Grasse Tyson and was greeted with much, well-justified jeering.

31. F.R. Ankersmit, *Political Representation* (Stanford University Press, 2002), p. 188. Here, Ankersmit is paraphrasing the views of Alain-Gérard Slama.

32. Ankersmit, pp. 185 and 193.

33. For an excellent look at why the judiciary is an inadequate answer, see: Martin Shapiro, *Who Guards the Guardians? Judicial Control of Administration* (University of Georgia Press, 1988).

34. Ankersmit, p. 194.

some structural answers, albeit ones that spoke to the needs of a late-eighteenth-century nation of around 3 million people. Therefore, we must keep an open mind about exactly how much the Constitution actually determines, and whether what it fixes firmly in place is well suited to our considerably more complex, modern nation of 325 million people, mobile phones and capital, and atomic bombs.

When the framers of the Constitution thought about the meaning of self-government, they were far less mindful of the Greek city-states than their contemporary Jefferson was. Indeed, their use of the word “democracy” was negative and cautionary: the enfranchised class of the day was openly fearful of rule by the expropriating masses. Accordingly, in *The Federalist Papers*, Publius often stressed that America was not to have a democracy but a complex, federalist republic. For example, in *Federalist No. 39*, Madison wrote:

We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior.³⁵

For Madison, then, to make the proposed American scheme of government republican, it was entirely sufficient that the people administering government “be appointed, either directly or indirectly, by the people.”³⁶ Prohibiting titles of nobility helped, too.

In other words, as far as the Constitution is concerned, “We the People” are to realize the ideal of self-government through reliance on representative government—in the popular election of representatives to the House, and the (then-) indirect but popularly accountable election of senators and the president. Nothing more, nothing less. From our current historical moment, this faith in representative government as a guarantor of the people’s interests may seem hard to fathom. Our own representatives offer us portraits of dysfunction in many different shades and we refuse to see them as self-portraits. Rightly so. But, our disillusionment has grown so large as to obstruct our view of what representative government is ideally supposed to do—and what it is not.

The Ideal

Contrary to what much of contemporary political science supposes, the ideal of representative government is not to have a legislature that faithfully instantiates whatever policies will satisfy the preferences of a majority of its citizens.

35. *The Federalist Papers* No. 39 (Madison). http://avalon.law.yale.edu/18th_century/fed39.asp.

36. *Ibid.*

Instead, representative government is about having trusted delegates of a diverse population figure out how their constituencies can live together harmoniously and join together to pursue collective action when promising opportunities exist. It is neither about giving majorities exactly what they want, nor is it about somehow conjuring differences away through the magic of deliberation. It is a system of decision-making designed to cope with the fact that people operating in good faith do not now and will not later agree on the right course of action for government.

Central to fulfilling this function is a mindset of provisional coalition-building. Representatives of groups that seem to be political opponents must be open to finding common cause on any given issue. This experience provides opportunities for trust-building cooperation even without resolving deeper tensions. Because representatives must work together across the whole range of political questions (including the decision of what is properly regarded as political), they are likely to develop an understanding of each other’s priorities and values as they seek a mode of mutual accommodation or at least coexistence. Blunt majority rule is about domesticating brute political force into a somewhat gentler form. But, effective representative government is truly the art of the possible, discovering just which of our interests can be joined together to support shared, public endeavors and which cannot.

Accordingly, in this ideal, the job of the representative is not merely to repeat what the majority of his constituents would say. As Lippmann explains, the representative who becomes a statesman says to his constituents: “What you think you want is this. What it is possible for you to get is that. What you really want, therefore, is the following.”³⁷ Again speaking ideally, Lippman argues that citizens actually crave such truth-telling: “Once a man becomes established in the public mind as someone who deals habitually and successfully with real things, he acquires an eminence of a wholly different quality from that of even the most celebrated caterer to the popular favor.”³⁸ The ideal representative is not a mirror or a flatterer of his constituents but rather a true mediator between their values and interests and the pressures of the larger world.

In this sense, representation is not a second-best to full-and-equal, direct participation of all citizens, to be embraced only because the latter is impossible to realize in practice. Rather, it is actually superior in itself because in performing the act of representation, it creates new frontiers of possibility for the people of the nation. To take a metaphor that has enchanted many theorists of the division of labor in the commercial realm, the intercourse between representatives of different constituencies is generative of new ways of think-

37. Lippman, p. 282.

38. *Ibid.*

ing about the nation that would not have been available to any group in isolation.

What Representative Government is Not

Suppose that something like the idealized vision of representative government could be realized, and thus that full bloom could be given to the aspect of the Constitution that its framers saw as ensuring self-government in the most important sense—which, as will soon be discussed, is far from a sure thing. Even then, it should be noted that government would fail to live up to several different conceptions of self-government.

Most fundamentally, there is the unreasonable but nevertheless prevalent view that “self-government” ought to mean “a *government* whose actions very much resemble what I would do if I were making the decisions all by *myself*.” That this is nonsense does not prevent plenty of people from intuitively treating it as the relevant normative yardstick. Satisfying such people will be impossible under any form of government but we should nevertheless prepare for many people to bitterly criticize representative government for the simple reason that their representatives do not act like their own personal agents.

There are less churlishly self-centered versions of the same basic complaint, in which representative democracy is reckoned a failure because of its inability to impose some specific ideal of justice or equality. If one thinks true democratic government would bring literal equality of opportunity, one will be disappointed.³⁹ If one believes representatives should be perfect mirrors of the electorate, then one will find plenty of reasons to think that the governing class has betrayed the “real people” and to wish for (never-ending) purges of power-holders. If one hopes representative government will empower *all* citizens to meaningfully affect public policy through their own participation, the overwhelming passivity of any actual citizenry will prove maddening. As the political theorist Jeffrey Edward Green argues, modern thinking about democracy has much to gain by honestly grappling with the inevitable “shadow of unfairness” that darkens democratic life for most of its “plebeian” participants.⁴⁰

Nor will representative government in its modern form deliver the moral discipline hoped for by Jefferson, Webster and other admirers of ancient Greek democracy. The modern form incorporates far too much division of labor—that is, it asks far too little of common citizens, who rightly perceive

their exclusion from important decision-making processes and allocate their time accordingly.

A More Realistic Scope

When we think about what representative government can accomplish today, then, we should not overhype its potential. We should not expect it to make people feel that, if they wish to change the course of federal policy, they are likely to get their way; they are not, by a simple consequence of numbers. Nor, realistically, should we expect generalist legislators to actually be the source of most of the detailed planning that goes into ongoing government operations. A handful of academic commentators have energetically made the case that any arrangements in which legislators delegate policy decisions to other actors betray the Constitution’s structure in which all legislative powers are given to Congress⁴¹—but few members of Congress have any sympathy for this position. They see delegation as a normal, acceptable and even desirable part of governing.

Indeed, on most matters, most of the time, legislators will end up deferring to executive branch experts even when they are most engaged, as in the appropriations process. Take, for example, the Fiscal Year 2018 defense spending ultimately agreed to in the omnibus appropriations act in March 2018, which came in at \$700 billion.⁴² This massive allocation of resources was the result of a high-level bipartisan agreement—which, in large part, consisted of deciding to give the military brass what they wanted. Neither generalist legislators (nor anyone else) could reason their way to a “correct” allocation of this money on the basis of some fundamental principles; rather, the question that presents itself annually is how to incrementally adjust last year’s spending pattern. Where there are fights (and, certainly, there are), they are on the margins. Of course, generals and admirals have the most authoritative opinions on which adjustments would be most beneficial.

And yet, the likelihood of deference to their judgments in general does *not* mean that it is inconsequential to subject such decisions to the ultimate control of generalist legislators. Giving legislators the chance to demur from what military leaders say they need is hugely different from giving those leaders the power to determine their own spending because creating that moment of accountability exerts a significant disciplinary effect. The military is forced—almost certainly for the better—to be a more politically alert and astute actor than it would be otherwise. That may sound

39. Adam Przeworski, *Democracy and the Limits of Self-Government* (Cambridge University Press, 2010), pp. 1 and 13.

40. Jeffrey Edward Green, *The Shadow of Unfairness: A Plebeian Theory of Liberal Democracy* (Oxford University Press, 2016).

41. See, e.g., David Schoenbrod, *Power Without Responsibility* (Yale University Press, 1995); and Philip Hamburger, *Is Administrative Law Unlawful?* (University of Chicago Press, 2015).

42. Richard Sisk, “Here’s what the military gets in \$1.3 trillion omnibus spending bill,” *Military.com*, March 22, 2018. <https://www.military.com/daily-news/2018/03/22/heres-what-military-gets-13-trillion-omnibus-spending-bill.html>.

unspectacular—surely it is less satisfying than saying that the people’s true representatives will do all of the heavy policy lifting. But that relatively modest, checking role for generalists is what we are fighting for when we fight for representative government today. It is worth defending.

REPRESENTATIVE GOVERNMENT IN RETREAT

The reason it must be actively defended is that representative government today is in retreat. Arguably, it has been for more than a century but its condition now seems particularly critical.

The rise of specialized administrative government in America has occurred because the Constitution allowed room for it. As to specialization, the Constitution was famously innovative, creating branches specialized by function rather than following Montesquieu’s and others’ lead in dividing power between different classes of society. By dividing state power into component parts lodged in the hands of separate officeholders, the framers ensured that no single person or group would possess a monopoly of power and that each branch would have both tools and occasion to check the others.

What the Constitution did not do was dictate how or where expert knowledge ought to fit into the new scheme of government. Given how much less division of labor there was in all aspects of life in 1787 and how modest in size the called-for government was, that was understandable. After the Constitution’s ratification in 1789, the new federal government in New York City was miniscule and humble, with the beginnings of the State Department run out of John Jay’s law offices and the War Department run by Henry Knox out of a few rented rooms at a Water Street tavern.⁴³

A Long Trend

But almost from the beginning of the republic, the federal government’s functions accumulated, its organization chart thickened and its reliance on specialist administrators increased. Legal historians have lately done a convincing job of showing that this growth cannot be traced to a simple beginning in the Interstate Commerce Commission or any other particular structural innovation; instead, reliance on specialists grew naturally out of the federal government’s interest in regulating interstate commerce of steamboats, administering Union soldiers’ pensions and overseeing national banks.⁴⁴ Reliance on specialists was enthusiastically accelerated at various points: in the dislodging of the spoils

system in the 1880s; the innovations of the Wilson administration⁴⁵ and, of course, the New Deal.

Even before the New Deal, however, astute critics were voicing serious concerns about the dominance of experts. In his short but classic essay published in 1931, “The Limitations of the Expert,” the British political economist Harold Laski sums up the conventional wisdom (which he goes on to criticize):

The day of the plain man has passed. No criticism of democracy is more fashionable in our time than that which lays emphasis upon his incompetence. This is, we are told, a big and complex world, about which we have to find our way at our peril. The plain man is too ignorant and too uninterested to be able to judge the adequacy of the answers suggested to our problems. As in medicine we go to a doctor, or in bridge-building to an engineer, so in matters of social policy we should go to an expert in social questions [...] Either we must trust the making of fundamental decisions to experts, or there will be a breakdown in the machinery of government.⁴⁶

Even in 1931, then, faith in specialist experts and dismissal of generalist understanding was already the dominant view, in need of reacting against.⁴⁷

In America, the growth of the administrative state since the New Deal has been self-conscious and steady, building up reservoirs of substantive power in the executive branch that can often be wielded effectively without much input from the generalists in Congress. There have been ebbs and flows in enthusiasm for the administrative state, leading to alternations of active expansion and procedural reform—but never much in the way of retrenchment. As Gary Lawson, one of the administrative state’s sharpest legal critics has put it, we have seen “the rise and rise of the administrative state.”⁴⁸ Today, a huge portion of substantive policy choices are handled by agencies through notice-and-comment rulemaking, rather than through congressional legislation.

And mostly, Congress has been an active collaborator in furthering these developments. Indeed, the statutes that give executive branch agencies wide latitude to determine what

45. See: Gail Radford, *The Rise of Public Authority: Statebuilding and Economic Development in Twentieth-Century America* (University of Chicago Press, 2013), Chs. 1 and 2.

46. Harold J. Laski, “The Limitations of the Expert,” *Fabian Tract* No. 235 (The Fabian Society, 1931), p. 3. <https://digital.library.lse.ac.uk/objects/lse:wal303heb>.

47. For an even earlier (though far more legally formalist) example, also from England, see A.V. Dicey, “The Development of Administrative Law in England,” *Law Quarterly Review* 31 (1915), pp. 148-53.

48. Gary Lawson, “The Rise and Rise of the Administrative State,” *Harvard Law Review* 107 (1994), pp. 1231-54.

43. Fergus Bordewich, *The First Congress: How James Madison, George Washington, and a Group of Extraordinary Men Invented the Government* (Simon and Schuster, 2016).

44. See: Jerry Mashaw, *Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law* (Yale University Press, 2012).

rules are necessary and then empower them to promulgate them, such as the Clean Air Act or Food Drug and Cosmetic Act, were passed by Congress—often with overwhelming majorities. Most have been revisited by legislators on numerous occasions, with amendments adding to the powers conferred on agencies more often than limiting them.

But we should not take this to mean that our agents of representative government have intentionally consigned themselves entirely to the margins of policymaking. Beginning with the Legislative Reorganization Act and Administrative Procedure Act, both passed in 1946, Congress built what the scholar David H. Rosenbloom calls a “legislative-centered public administration.”⁴⁹ Congress made massive delegations of power to the executive branch but it continually injected itself into administrative practice. In the process, it imported concerns that go beyond efficiency and organizational effectiveness, including “representativeness, participation, openness, responsiveness, procedural safeguards, and public accountability.”⁵⁰ For many years, a prominent strain of political science known as the “congressional dominance school” argued that, in fact, through its control of appropriations and use of oversight techniques—both formal and informal—Congress effectively exercised tight control over the bureaucracy.⁵¹

If ever that hypothesis was plausible, it is not any longer.⁵² Rosenbloom is surely right in pointing out that Congress has not intended its utter marginalization but in the nearly-two decades since he wrote, the legislature’s demonstrated ability to participate in the work of governing has fallen apart. That claim strikes most political observers as clearly correct and yet demonstrating it rigorously is not a trivial matter.⁵³ The very short version is that the two political parties in Congress have given themselves over to a kind of perpetual tactical warfare, in which even the most basic functions of the legislature become treacherous. The budget process

produces annual crises rather than serious prioritization. Incremental adjustments to important statutes have all but disappeared, since when Congress does act, it tends to lurch violently toward ambitious but poorly defined mandates. Moreover, Congress routinely chooses to provide itself insufficient resources for the task of overseeing the vast executive branch. The net result of all these is a policymaking process in which representative government plays little constructive role.

A New Ideal

As Laski’s distillation of prevailing elite opinion in 1931 indicates, plenty of smart people who think about government greet the demise of representative government with aplomb. These people feel confident that self-government is an ideal whose time has passed. Accountability to the public or their generalist representatives is not desirable because neither group can effectively hold specialists to account. Inasmuch as government directly serves people, it must be accountable to them as customers, not as citizens. High-level accountability must come from other disinterested experts.

It is important to understand that this way of thinking is profoundly idealistic—although, obviously, not about the value of representative government or the possibility of meaningful participation for the ordinary citizen. Instead, adherents to this way of thinking put their faith in professional elites and their ability to reliably apprehend the public good and competently pursue it.

Writing in 1929, Walter Lippmann saw this as a natural and healthy consequence of the continued development of the division of labor:

Every year as the machine technology becomes more elaborated, the legislative control for which the pre-war progressives fought becomes less effective. It becomes more and more difficult for legislatures to make laws to protect the workers which really fit the rapidly changing conditions of work. Hence the tendency to put the real law-making power in the hands of administrative officials and judges who can adjust the general purpose of the law to the unclassifiable facts of industry.⁵⁴

In other words, increasing reliance on experts should be seen as the only proper response to accelerating social and economic change. Lippmann went on to explain what he saw as the only truly moral path forward in our disenchanting, specialized age: To empower the disinterested man, who has transcended his passions and given himself over to understanding some narrow part of our advanced machine age.

49. David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (University of Alabama Press, 2000), p. xi.

50. *Ibid.*

51. See, e.g., Matthew McCubbins et al., “Administrative Procedures as Instruments of Political Control,” *Journal of Law, Economics, and Organization* 3 (Fall 1987), pp. 243-77. <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.858.1881&rep=rep1&type=pdf>; and “Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies,” *Virginia Law Review* 75 (1989), pp. 431-82. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5950&context=faculty_scholarship.

52. The strong form of the congressional dominance hypothesis was always dubious, backed more by theory than by empirical evidence. For one excellent demonstration of its hollowness, see Steven Balla, “Administrative Procedures and Political Control of the Bureaucracy,” *American Political Science Review* 92 (1998), pp. 663-73. <https://www.cambridge.org/core/journals/american-political-science-review/article/administrative-procedures-and-political-control-of-the-bureaucracy/CE6CF2EC-1595A21D58E26029BFC6A1DA>.

53. For the author’s attempt to do so, see Philip Wallach, “Congress Indispensable,” *National Affairs* 34 (Winter 2018), pp. 19-32. <https://www.nationalaffairs.com/publications/detail/congress-indispensable>.

54. Lippmann, pp. 254-55.

As Leonard and Mark Silk wrote in their 1980 study, *The American Establishment*, Lippmann’s ideal of a disinterested class of experts skillfully guiding the nation into the future would become the ascendant creed of America’s official elite in the decades to come. This class hoped “to build a private source of public good, to join the knowledge and moral authority of a nonsectarian sect to the interests of a ruling class, in an effort to preserve liberty in a mass-industrial society.”⁵⁵ Experts devoted to knowledge would harmonize and domesticate the nation’s sometimes unruly corporate and political leaders, maintaining order in difficult times.

In its politically relevant forms, technocracy has not openly renounced democracy. Rather, it claims that technocrats are the only *truly* loyal servants of the people because they practice the disinterested pursuit of the public good, while politicians are inherently corrupted by special interests and incapable of seeing the big picture.⁵⁶ Self-government is declared reborn through e-government, the glorious chance given to citizens to interface directly with policymakers (i.e., to submit comment forms that may or may not receive any real, human attention).⁵⁷

Whereas the Constitution divides labor between the separated branches, those who put their faith in disinterested experts favor empowering specialists embedded in a flexible administrative state to respond to changing circumstances as they see fit—since no other form of government possesses sufficient nimbleness to cope with the shifting sands of a modern economy. The old division embedded in the Constitution seems tolerable if and only if it does not matter too much: if legislators and courts mostly make themselves scarce, they may minimize the damage they do.

WHY REPRESENTATIVE SELF-GOVERNMENT REMAINS A WORTHY ASPIRATION

The rejection of self-government in favor of empowering specialized experts is not something that can be dismissed out of hand. Embracing specialization in government extends the logic of the division of labor in commercial life in ways that are at least superficially compelling and perhaps more than that. If we are to retain our credibility, generalists (the present author very much included) must admit our very serious limitations in assessing the work of government specialists, who do indeed have superior knowledge about the details of their chosen subjects. Given the disparity in knowledge, it may seem that the argument in favor of generalists is lost

55. Leonard Silk and Mark Silk, *The American Establishment* (Basic Books, 1980), p. 324.

56. See, e.g., Philip Wallach, “The Administrative State’s Legitimacy Crisis,” Brookings Institution, April 2016, pp. 13–17. https://www.brookings.edu/wp-content/uploads/2016/07/Administrative-state-legitimacy-crisis_FINAL.pdf.

57. For an illustrative, if early, example of the genre, see Cass Sunstein, *Republic.com* (Princeton University Press, 2001).

from the outset but self-government retains its relevance for three reasons.

The Shortcomings of our Aristocracy of Merit

First, rule by specialists can only be justified by claims of technical competence that will, in practice, not always be borne out. Our aristocracy of merit can never live up to its own extravagant claims of confident and comprehensive understanding and these are (on its own account) its sole basis for legitimately monopolizing power.

That experts are human beings is reason enough to suggest that they are prone to failure. But there are other reasons, too. Wallach’s Law is that everything is more amateurish than you think, even after accounting for Wallach’s Law. As such, claims of professional expertise never turn out to be everything they are cracked up to be; they are rhetorical devices to secure authority for a certain group of actors. Hype is always endemic to claims of expert authority. This does not mean expertise as such is “bunk” but it does mean that when an accepted expert position is contested, sometimes the experts will turn out to be wrong.

Laski provided another reason: expertise, he said, has “a certain caste-spirit about it, so that experts tend to neglect all evidence which does not come from those who belong to their own ranks [...] The expert tends, that is to say, to make his subject the measure of life, instead of making life the measure of his subject,” and as a result tends to confuse learning with wisdom.⁵⁸ Such insularity produces systematic errors that experts are blinded to—precisely because this blindness is a central part of their expert identity.

Tocqueville also put this point eloquently: “It is doubtless important to the good of nations that those who govern have virtues or talents; but what is perhaps still more important to them is that those who govern do not have interests contrary to the mass of the governed; for in that case the virtues could become almost useless and the talents fatal.”⁵⁹

Government Humility

Sophisticated defenders of expert authority will say: yes, of course experts are sometimes in error and sometimes even systematically so. Still, the average quality of their decisions will be considerably better than the next-best alternative and so, as a society, we will be better off the more we empower experts at the expense of interest-heavy, demagogic politicking.

58. Laski (1931), pp. 4 and 8.

59. *Democracy in America*, Vol. I, Part Two, Ch. 6, p. 223.

This position sounds so very reasonable that it is easy to miss how much it is premised on faith and therefore invulnerable to any contrary argument. For example, who is to evaluate the relative merit of experts and their relevant competitors? What criteria should they use? Supposing experts are empowered, who is to determine whether their performance has been good?

If the answer is simply, “the experts themselves,” something has clearly gone wrong, which brings us to the second reason to favor a mindset of self-government. Government must be for the people, and to the extent it is wholly by the experts and evaluated by experts, it is unlikely to be so. On this point, Laski is eloquent:

“The guest,” said Aristotle with his homely wisdom, “will judge better of a feast than the cook.” However much we may rely upon the expert in formulating the materials for decision, what ultimately matters is the judgment passed upon the results of policy by those who are to live by them. Things done by government must not only appear right to the expert; their consequences must seem right to the plain and average man. And there is no way known of discovering his judgment save by deliberately seeking it. This, after all, is the really final test of government; for, at least over any considerable period, we cannot maintain a social policy which runs counter to the wishes of the multitude.⁶⁰

The final sentence of the preceding passage is merely Lippman’s “government in the people” point again, making an empirical prediction about what government can make stick. But Laski’s overall emphasis is more normative: namely, there is something profoundly right in saying that the people must be the ultimate judges of the expert. This is a restatement of the ancient principle *nemo iudex in causa sua*, nobody should be the judge of his own case. There is something appallingly arrogant—and circular—in the idea that experts should be exempt because they are the only ones capable of judging their own performance. Sometimes they may be—but sometimes they may not. Whatever their merits, claims of this ilk cannot survive serious government failures. For proof, we need look no further than the recent financial crisis.⁶¹

Government can only achieve legitimacy if it operates on a more-humble basis. Indeed, the idea that public servants must humble themselves before their fellow citizens is at the core of the Anglo-American political tradition that displaced the absolute monarchy of the Tudors and Stuarts, and is in tension with organizing government to favor experts. The

60. “The limitations of the expert,” p. 12.

61. Philip Wallach, *To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis* (Brookings Institution Press, 2015).

legal historian Philip Hamburger argues that “the administrative combination of expert knowledge and consolidated power really does hark back to the medieval monarchical vision of a wise ruler, who knows what is best for his people, and who therefore must have the full range of unspecialized power to impose justice.”⁶² Each expert derives authority within their professional realm, of course, rather than universally as a matter of divine right. But the claim to be above the judgment of any political peer is distinctly similar. Congress as a representative institution necessarily rests on a very different form of justification. Properly understood, its purpose is not to get right answers and so when it errs, its basis of legitimacy is not immediately called into question. It must only succeed at being representative, which is not necessarily easy but eminently possible.

Hamburger is often attacked as a libertarian outlier and it is true that his rejection of specialized authority is thoroughgoing enough as to make it rather revolutionary. So, it is worth noting what deep roots this type of defense of representative government has. Writing in the run-up to the French Revolution in 1789, the Abbe Sieyès took it for granted that “the more a society progresses in the arts of trade and production, the more apparent it becomes that the work connected to public functions should, like private employments, be carried out less expensively and more efficiently by men who make it their exclusive occupation.”⁶³ Sieyès was thus an enthusiastic proponent of greater administrative specialization. And yet he immediately cautioned that, as a matter of constitutional design, the agents of government wielding the “active power” must be kept separate from those endowed with the “legislative power,” lest they come to see themselves as the true masters of the political system.⁶⁴ In that case, citizens would be like “a mass of slaves busying themselves with serving them and paying for their own chains.”⁶⁵ The government must be understood as a tool of the people—lest the people come to be understood as a tool of their rulers.

Self-government as a Necessary Creed for a Politically Free People

Sieyès’s dramatic language of freedom and slavery brings us to the third reason to favor self-government: the idea itself may cause people to bear themselves differently, relative to thinking of themselves as mere subjects.

We can think of political life in two different ways. The first is as an attempt to organize and harmonize, as much as pos-

62. Philip Hamburger, *Is Administrative Law Unlawful?* (University of Chicago Press, 2014), p. 344.

63. Emmanuel Joseph Sieyès, *Political Writings*, ed. and trans. by Michael Sonenscher (Hackett Publishing Company, Inc., 2003), p. 48.

64. *Ibid.*, p. 49.

65. *Ibid.*

sible, existing forces already arraying themselves in our polity. As argued above, there is good reason to think that representative government is well-suited to this task. But we should not pretend that representative government makes this process painless: conflict will persist, differences will not be transcended and fealty to the deliberative process may often do little to soothe the pain of losing.

There is another way to think about political life, though, rooted in the recognition that people's political orientations are largely called forth by the politics they encounter. To the extent politics offers opportunities for creative compromise among diverse groups, it can be energizing. To the extent contact with the government entails nothing more than contact with bureaucracies as a frustrated customer, it is likely to be enervating. As Tocqueville opined:

Democracy does not give the most skillful government to the people, but it does what the most skillful government is often powerless to create; it spreads a restive activity through the whole social body, a superabundant force and energy that never exists without it, and which, however little circumstances may be favorable, can bring forth marvels. Those are its true advantages.⁶⁶

Obviously, from this perspective, we want to choose a form of government that offers ordinary people a bridge into the affairs of government, even if they will not always choose to cross it. Representatives solicitous of constituents' votes and resources will far more often provide such a bridge than experts, who see themselves above solicitousness or street-level bureaucrats, who are likely to (rightly) view themselves as functionaries lacking power to act even on their own political impulses.

CONCLUSION

It is quixotic to assume that we might do away with the administrative state and its experts and return American government to its nineteenth-century form—let alone that we might pursue an even more radically participatory form of Jeffersonian democracy. It is pusillanimous and anti-republican, not to mention mean-spirited, to sneer at the importance of common citizens' judgments in holding the bearers of state power to account.

We must therefore perform a balancing act with regard to our ideal of self-government. We must neither take it too literally, such that we see the presence of any specialization or division of labor as inherently suspect nor allow ourselves to bandy the words about as empty rhetoric. To the extent we resist exaggeration, we will be better able to take the principle seriously when embracing it is the appropriate action.

66. *Democracy in America*, Vol. I, Part Two, Ch. 6, p. 234.

Self-government should absolutely retain its place in our pantheon of civic values and faith in its worthiness should be cherished. When there are institutional design choices to be made, we should seek to promote self-government at the margin, notwithstanding the protests of well-qualified experts. But we should not pretend to monotheistic devotion, lest we look like awful hypocrites.

To some extent, our inherited Constitutional structure predetermines what the fight for self-government must look like: it must be a fight to restore and maintain a central position in our policymaking process for our representative legislature.⁶⁷ This requires restoring functionality, direction and a sense of self to a body that has clearly become adrift in recent years. It also requires that Congress never see itself as subordinate to the executive branch, even in those situations it finds it advantageous to follow the president's or bureaucracy's lead.

Members of Congress must rediscover the constitutional tools available to them in order to restore their institution's reputation as the trusted intermediary of our political system. As Josh Chafetz convincingly argues in his recent book, *Congress's Constitution*, the Constitution confers a wealth of such tools on representatives even excluding the tremendous power of legislation.⁶⁸ To judiciously exercise the powers of oversight over the executive branch is especially important and Congress should not be shy about asserting itself as a coequal constitutional actor in this realm, especially given the rather chaotic state our executive branch is currently in.⁶⁹ But Congress must also rehabilitate its legislative capacity, which is the heart of its compromise-seeking function.

A growing chorus of congressional critics wonders whether any such rehabilitation is possible; some wonder whether representative government was ever so worthwhile in the first place, while others think it has been made obsolete by the complexities of the twenty-first century. Many of these critics hope that Congress will simply fade into obscurity or into a comfortable role as irrelevant peanut gallery, while the real workers in government effectively restructure the

67. It may also support devolution of power through federalism, a perennially hyped cure for citizen alienation, which I have intentionally neglected. But for that to work, we would need to recover an understanding of federalism that has largely been lost since the New Deal. See Michael Greve, *The Upside-Down Constitution* (Harvard University Press, 2012).

68. Josh Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* (Yale University Press, 2017).

69. *Ibid.*

policymaking process to make it more flexible, results-oriented and expert-empowering.⁷⁰

Such critics are delusional, absurdly imagining that our written constitution will somehow just get out of the way. They hope that the Madisonian architecture of the Constitution can somehow be filled up with Wilsonian operators until nobody thinks about their surroundings anymore—a dream that has long preoccupied American students of public administration.⁷¹ Even if one thinks Congress has no genuine ability to constructively contribute at this juncture, it clearly retains the ability to massively foul things up. Those who see self-government as basically anachronistic are thus well-advised to seek thoroughgoing constitutional reform.⁷²

Conversely, those of us who retain some faith in self-government, however naïve it may sometimes seem, should mount a vigorous but qualified defense of our Constitutional inheritance—one that insists that our Madisonian separation of powers embeds the right ideals into our political life but that admits our current politics are doing a poor job realizing them in practice. That is less rhetorically compelling than saying that the Constitution can directly empower “We the People” to take control of everything if only those dastardly politicians would get out of the way; and less sophisticated than saying that in a world of ever-proliferating knowledge, the only morally worthy thing to do is defer to experts. But it is an honest day’s work, worthy of a people who would aspire to govern themselves.

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70. The most forthright statement of this sort is Adrian Vermeule, “Imagine there’s no Congress,” *The Washington Post*, Jan. 11, 2016. https://www.washingtonpost.com/news/in-theory/wp/2016/01/11/imagine-theres-no-congress/?utm_term=.d8d77cfb5b38.

71. See Vincent Ostrom, *The Intellectual Crisis in American Public Administration*, 2nd ed. (University of Alabama Press, 1989), pp. 88-100. See also, Daniel Stid, “Two Pathways for Congressional Reform,” in *Is Congress Broken: The Virtues and Defects of Partisanship and Gridlock*, eds. William F. Connelly Jr., et al. (Brookings Institution Press, 2017), pp. 11-36.

72. A notable recent polemic taking this tack is William G. Howell and Terry M. Moe, *Relic: How Our Constitution Undermines Effective Government* (Basic Books, 2016).