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## Climate Change and the Challenges to Democracy

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# Climate Change and the Challenges to Democracy

MARCELLO DI PAOLA\* & DALE JAMIESON\*\*

*This Article explores the uneasy interaction between climate change and democracy, particularly liberal democracy. Its central claim is that climate change and other problems of the Anthropocene—this new epoch into which no earthly entity, process, or system escapes the reach and influence of human activity—expose and exacerbate existing vulnerabilities in democratic theory and practice, particularly in their currently dominant liberal form; and that both democracies' failures and their most promising attempts at managing these problems expose democracies to significant legitimacy challenges.*

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## I. INTRODUCTION

In an oft-quoted passage of a paper co-authored with Hans Suess in 1957, climate science pioneer Roger Revelle wrote:

[H]uman beings are now carrying out a large scale geophysical experiment of a kind that could not have happened in the past nor be reproduced in the future. Within a few centuries we are returning to the atmosphere and oceans the concentrated organic carbon stored in sedimentary rocks over hundreds of millions of years.<sup>1</sup>

We are now beginning to see the implications of such an experiment.<sup>2</sup> The unusually high quantities of greenhouse gases that have crowded the Earth's atmosphere during the past two centuries, mostly due to humans' massive utilization of fossil energy sources, are currently at work remaking the planet.<sup>3</sup> This may come at great cost, as the makeover process will likely cause, among other things, sea levels to rise; "more frequent and extreme weather events," such as floods, hurricanes, and droughts; widespread eco-systemic disruptions; "more sweeping epidemics; food and water shortages; and vast and diverse ranges of second- and third-order problems (such

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<sup>1</sup> Roger Revelle & Hans E. Suess, *Carbon Dioxide Exchange Between Atmosphere and Ocean and the Question of an Increase of Atmospheric CO<sub>2</sub> During the Past Decades*, 9 TELLUS 18, 19 (1957).

<sup>2</sup> See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REPORT 6–7 (Rajendra K. Pachauri et al. eds., 2015) [hereinafter IPCC].

<sup>3</sup> See *id.* at 4–7.

as political instability and mass migrations) whose details will vary in different places, times, and sociopolitical contexts.”<sup>4</sup> Climate change is, in many respects, the most dangerous experiment that humans have ever conducted.<sup>5</sup>

Despite its magnitude and gravity, climate change is only one aspect of a larger picture. The rise in global temperature can be seen as a sign of global transformations that are so vast and deep that they merit the label of “epochal.”<sup>6</sup> This is the discussion that has been triggered by the introduction of the term “Anthropocene” into environmental discourse.<sup>7</sup>

The term “Anthropocene” was coined by limnologist Eugene Stoermer in the 1980s, popularized by Nobel prize-winning chemist Paul Crutzen, and came to widespread public attention in a short article Stoermer and Crutzen published in 2000, in which they claimed that humanity had become a major geological force on the planet.<sup>8</sup> In 2006, Hibbard *et al.* noted that since 1950, anthropogenic biological and geological changes had been subject to a “Great Acceleration.”<sup>9</sup> In 2011, Steffen *et al.* summarized the planet’s current situation in the following way:

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<sup>4</sup> Dale W. Jamieson & Marcello Di Paola, *Political Theory for the Anthropocene*, in GLOBAL POLITICAL THEORY 254, 257 (David Held & Pietro Maffettone eds., 2016).

<sup>5</sup> See DALE JAMIESON, REASON IN A DARK TIME: WHY THE STRUGGLE AGAINST CLIMATE CHANGE FAILED AND WHAT IT MEANS FOR OUR FUTURE 1 (2014).

<sup>6</sup> See generally Will Steffen *et al.*, *The Anthropocene: Conceptual and Historical Perspectives*, 369 PHIL. TRANSACTIONS ROYAL SOC’Y A 842, 842–43 (2011).

<sup>7</sup> See CHRISTOPHE BONNEUIL & JEAN-BAPTISTE FRESSOZ, THE SHOCK OF THE ANTHROPOCENE: THE EARTH, HISTORY AND US 3–4 (David Fernbach trans., 2016); see also CHRISTIAN SCHWÄGERL, THE ANTHROPOCENE: THE HUMAN ERA AND HOW IT SHAPES OUR PLANET 52–53 (Lucy Renner Jones trans., 2014), <https://www.synergeticpress.com/wp-content/uploads/2014/10/Anthro-Review-Copy.pdf>.

<sup>8</sup> Paul J. Crutzen & Eugene F. Stoermer, *The “Anthropocene,”* 41 GLOBAL CHANGE NEWSL. 17, 17–18 (2000); see also Paul J. Crutzen, *Geology of Mankind*, 415 NATURE 23, 23 (2002).

<sup>9</sup> Kathy A. Hibbard *et al.*, *Group Report: Decadal-scale Interactions of Humans and the Environment*, in SUSTAINABILITY OR COLLAPSE?: AN INTEGRATED HISTORY AND FUTURE OF PEOPLE ON EARTH 341, 342 (Robert Costanza *et al.* eds., 2006). On the stratigraphic evidence for the Anthropocene, see Jan Zalasiewicz *et al.*, *Stratigraphy of the Anthropocene*, 369 PHIL. TRANSACTIONS ROYAL SOC’Y A

In addition to the carbon cycle, humans are (i) significantly altering several other biogeochemical, or element cycles, such as nitrogen, phosphorus and sulphur, that are fundamental to life on the Earth; (ii) strongly modifying the terrestrial water cycle by intercepting river flow from uplands to the sea and, through land-cover change, altering the water vapour flow from the land to the atmosphere; and (iii) likely driving the sixth major extinction event in Earth history. Taken together, these trends are strong evidence that humankind, our own species, has become so large and active that it now rivals some of the great forces of Nature in its impact on the functioning of the Earth system.<sup>10</sup>

However, the Anthropocene is not yet an established geological category, and its introduction and extensive adoption in some circles has given rise to controversy.<sup>11</sup> This Article will not directly address these controversies, but it will use the term because it reminds us that climate change is not a “one off” problem but part of a systematic transformation of the planet and human relationships with nature that will continue for the foreseeable future.<sup>12</sup> Whatever else is

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1036, 1037–43 (2011). For a proposal on when the Anthropocene should be thought to have begun, see Jan Zalasiewicz et al., *When Did the Anthropocene Begin? A Mid-Twentieth Century Boundary Level is Stratigraphically Optimal*, 383 QUATERNARY INT’L 196, 197, 200–01 (2015).

<sup>10</sup> Steffen et al., *supra* note 6, at 843 (internal citation omitted).

<sup>11</sup> For a clear statement of objections on geological grounds, see generally Stanley C. Finney & Lucy E. Edwards, *The “Anthropocene” Epoch: Scientific Decision or Political Statement?*, GEOLOGICAL SOC’Y AM. TODAY, Mar.–Apr. 2016, at 4, 4, 6–9. On various conceptual controversies on the Anthropocene in the humanities, social sciences and environmental philosophy, see generally Clive Hamilton et al., *Thinking the Anthropocene*, in THE ANTHROPOCENE AND THE GLOBAL ENVIRONMENTAL CRISIS: RETHINKING MODERNITY IN A NEW EPOCH 1, 1–12 (Clive Hamilton et al., eds. 2015); Tom Butler, *Lives Not Our Own*, in KEEPING THE WILD: AGAINST THE DOMESTICATION OF EARTH ix–xiii (George Wuerthner et al. eds., 2014).

<sup>12</sup> For our interventions in these controversies, see generally Jamieson & Di Paola, *supra* note 4, at 256; Marcello Di Paola, *Virtues for the Anthropocene*, 24 ENVTL. VALUES 183, 183–86 (2015); DALE JAMIESON & BONNIE NADZAM, LOVE IN THE ANTHROPOCENE 11–27 (2015); Dale Jamieson, *The Anthropocene: Love It*

true, the world of the twenty-first century will be increasingly different from the world of our grandparents—with unprecedented numbers of humans, rapid technological change, global interconnectedness, massive exploitation of nature, and consequent ecological degradation marking the difference.<sup>13</sup> Each of these changes, and their various combinations, have political dimensions and consequences and contribute to configuring novel operating spaces for political theory.

In this Article, we explore the uneasy relationship between climate change and democracy, with special attention to its currently dominant and most widely practiced model: liberal democracy. Our interest is not in liberal democracies' historical responsibilities for climate change and other problems of the Anthropocene, but rather in the interaction between such problems and democracy.

Our central claims are that climate change and other problems of the Anthropocene expose and exacerbate existing vulnerabilities in democratic theory and practice, particularly in their currently dominant liberal version, and that both democracies' failures and their most promising attempts at managing these problems expose them to significant legitimacy challenges. We expect these challenges to increase as the Anthropocene intensifies.

In Part II, we analyze the twin challenges of climate change and governance, and of democracy and representation. In Part III, we briefly survey the history of attitudes towards democracy, showing how recent its almost universal celebration really is. In Part IV, we discuss democracy's most influential current form, liberal democracy. In Part V, we sketch some of democracy's vulnerabilities. In Part VI, we focus on the interlocking crises of democracy and climate change. Finally, in Part VII, we draw some conclusions.

## II. THE TWIN CHALLENGES

We are living in a period in which many perceive both an environmental crisis, best exemplified in climate change, and a crisis in

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or *Leave It*, in *THE ROUTLEDGE COMPANION TO THE ENVIRONMENTAL HUMANITIES* 13, 13–15 (Ursula K. Heise et al. eds., 2017).

<sup>13</sup> See generally IPCC, *supra* note 2, at 4–7, 95–97.

governance.<sup>14</sup> Climate change continues almost unabated,<sup>15</sup> and democratic governments are increasingly seen as ineffectual and unresponsive with respect to this problem and to a range of other problems as well.<sup>16</sup> In order to tease out the possible relationships between the challenges of climate change and governance, we need to appreciate each in its own terms.

#### A. *Climate Change and Governance*

The most systematic attempts at climate governance have been through the international system, taking nation-states as primary agents.<sup>17</sup> The crowning achievement has been the Framework Convention on Climate Change (FCCC), which opened for signature at the Rio Earth Summit in 1992, and has been ratified by 196 states and the European Union.<sup>18</sup> The parties to the FCCC committed themselves to stabilizing “greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>19</sup> In a series of statements, declarations, and agreements, “dangerous anthropogenic interference [] with the climate system” has come to be understood as a 2 degree Celsius increase in Earth’s mean surface temperature from a late twentieth-century baseline.<sup>20</sup> The Earth has already warmed .8 degrees Celsius over the last thirty years; and a recent paper suggests

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<sup>14</sup> See HAYLEY STEVENSON & JOHN S. DRYZEK, *DEMOCRATIZING GLOBAL CLIMATE GOVERNANCE* 3–6 (2014); Jamieson & Di Paola, *supra* note 4, at 270–73.

<sup>15</sup> See the latest data at NOAA National Centers for Environmental Information. *State of the Climate: Global Climate Report*, NAT’L CTR. FOR ENVTL. INFO., <https://www.ncdc.noaa.gov/sotc/global/201703>.

<sup>16</sup> See Jamieson & Di Paola, *supra* note 4, at 274–76.

<sup>17</sup> See generally JAMIESON, *supra* note 5, at 34–59 (discussing climate diplomacy).

<sup>18</sup> *Background on the UNFCCC: The International Response to Climate Change*, UNITED NATIONS CLIMATE CHANGE, [http://unfccc.int/essential\\_background/items/6031.php](http://unfccc.int/essential_background/items/6031.php) (last visited Dec. 19, 2017); *First Steps to a Safer Future: Introducing the United Nations Framework Convention on Climate Change*, UNITED NATIONS CLIMATE CHANGE, [http://unfccc.int/essential\\_background/convention/items/6036.php](http://unfccc.int/essential_background/convention/items/6036.php) (last visited Dec. 19, 2017).

<sup>19</sup> United Nations Framework Convention on Climate Change, art. II, *opened for signing* June 4, 2012, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994).

<sup>20</sup> Joel B. Smith et al., *Assessing Dangerous Climate Change Through an Update of the Intergovernmental Panel on Climate Change (IPCC) “Reasons for*

that even if emissions were to stop immediately, we may already be committed to a 1.5 degree Celsius warming.<sup>21</sup> 194 nations, as well as the European Union, have signed the Paris Agreement; 171 have ratified it, including the United States;<sup>22</sup> and 165 have made voluntary commitments to reduce their emissions.<sup>23</sup> Nonetheless, even if all these commitments are kept, the Earth may still be on its way to a 3 degree Celsius warming.<sup>24</sup>

There are many reasons why climate change is such a difficult issue. One glaring reason is that climate change has many properties that demonstrate that it might be “the world’s largest collective action problem.”<sup>25</sup> No country can singularly secure the global public good of climate stability; high-emitting rich countries do not want developing countries to follow in their footsteps, while developing countries want rich countries to lead in reducing emissions.<sup>26</sup> To make matters worse, each country wants to benefit from its own greenhouse gas emissions while others reduce their emissions.<sup>27</sup> To a large extent, these behaviors simply follow from the logic of collective action: for each actor, “defection dominates cooperation, [no matter how] others act.”<sup>28</sup>

Climate change also poses an intergenerational collective action problem: since every generation benefits from its own emissions,

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*Concern*,” 106 PROC. NAT’L ACAD. SCI. U.S. 4133, 4135–36 (2008); *accord What Is Dangerous Interference with the Climate System?*, IPCC, [https://www.ipcc.ch/publications\\_and\\_data/ar4/wg3/en/ch1s1-2-2.html](https://www.ipcc.ch/publications_and_data/ar4/wg3/en/ch1s1-2-2.html) (last visited Dec. 24, 2017).

<sup>21</sup> See Thorsten Mauritsen & Robert Pincus, Letter, *Committed Warming Inferred from Observations*, 7 NATURE CLIMATE CHANGE 652, 652–54 (2017).

<sup>22</sup> *Paris Agreement - Status of Ratification*, UNITED NATIONS CLIMATE CHANGE, [http://unfccc.int/paris\\_agreement/items/9444.php](http://unfccc.int/paris_agreement/items/9444.php) (last visited Dec. 19, 2017).

<sup>23</sup> See *Welcome to the Interim NDC Registry*, NDC REGISTRY (INTERIM), <http://www4.unfccc.int/ndcregistry/Pages/Home.aspx> (last visited Dec. 19, 2017).

<sup>24</sup> See Fiona Harvey, *World on Track for 3C of Warming Under Current Global Climate Pledges, Warns UN*, GUARDIAN (Nov. 3, 2016, 7:00 AM), <https://www.theguardian.com/environment/2016/nov/03/world-on-track-for-3c-of-warming-under-current-global-climate-pledges-warns-un>.

<sup>25</sup> JAMIESON, *supra* note 5, at 4.

<sup>26</sup> See *id.* at 35–38, 45, 57.

<sup>27</sup> See, e.g., *id.* at 57.

<sup>28</sup> *Id.* at 99. For more on these claims, see *id.* at 11–61, 96–102.



but the costs of climate change are mostly deferred to future generations, each generation has an incentive not to control its emissions.<sup>29</sup> Furthermore, since “each generation (except the first) suffers from the emissions of previous generations, benefiting from their own present emissions may even appear to be just compensation for what they have suffered” and “this reasoning leads to the continuous build-up of greenhouse gases in the atmosphere over time.”<sup>30</sup>

These problems are even worse than they seem, as climate change does not involve a single intra- and a single inter-generational collective action problem: jurisdictional boundaries and competing scales lead to multiple, overlapping, and hierarchically embedded collective action problems.<sup>31</sup> A wide range of behaviors by individuals, nations, firms, and other entities affect the climate, but they are governed by an equally vast array of different regimes with different mandates.<sup>32</sup> For example, decisions about trade and intellectual property affect greenhouse gas emissions, but each area is governed by its own legal regimes.<sup>33</sup>

This may seem abstract, but on a daily basis we witness policy failures and dysfunctions that are driven by the same dynamics, even when the problems are less complex than climate change—for example, when an industrial city pollutes the waters of a surrounding area.<sup>34</sup> Much like a city acts in the interest of its residents (who are employed by the industry), but not of residents of surrounding areas (who are affected by the pollution), states and especially “well-functioning democracies act in the interest of the governed rather than

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<sup>29</sup> See generally Stephen M. Gardiner, *The Pure Intergenerational Problem*, 86 *MONIST* 481, 481–85 (2003) (“Ethical issues concerning future people are usually conceived of as problems of future generations.”).

<sup>30</sup> Dale Jamieson, *The Nature of the Problem*, in *OXFORD HANDBOOK OF CLIMATE CHANGE AND SOCIETY* 47 (John S. Dryzek et al. eds., 2011) [hereinafter *The Nature of the Problem*].

<sup>31</sup> See Jamieson & Di Paola, *supra* note 4, at 262–63.

<sup>32</sup> See *id.* at 267–69.

<sup>33</sup> See, e.g., Gladwin Isaac & Trishna Menon, *When Good Intentions Are Not Enough: Revisiting the US-India Solar Panels WTO Dispute*, 10 *OIDA INT’L J. SUSTAINABLE DEV.* 37, 37–38, 43 (2017) (With respect to trade, the WTO has ruled against India’s requirement that solar panels be produced domestically, which India argued was necessary to have low cost solar power).

<sup>34</sup> JAMIESON, *supra* note 5, at 100.

on behalf of all those whose interests are affected.”<sup>35</sup> The benefits from the activities that cause climate change primarily accrue to those who are members of particular political communities, while the costs are primarily borne by those who are not.<sup>36</sup> In the case of climate change, the “costs are [mostly] borne by those who live beyond the borders of the major emitters, future generations, animals, and nature.”<sup>37</sup>

### B. *Democracy and Representation*

Democratically elected governments have been largely ineffective in addressing climate change, as well as a host of other global problems and their domestic implications.<sup>38</sup> These include (to varying degrees in different countries) pollution and biodiversity loss, nuclear waste management, nuclear proliferation, cyber-(in)security, financial insecurity, business flight, growing wealth inequality, public debt management, migration, intercultural integration, and terrorist radicalization. The supranational institutions that these governments have created and supported, like the United Nations and the European Union, have not been particularly successful in addressing these issues either.<sup>39</sup>

In many democratic countries, citizens are not only frustrated with the relatively poor performances of their governments, but also increasingly resentful of institutions and procedures that they perceive as inaccessible, arcane, dominated by partisan interests, crowded with rent-seekers, and generally detached and unresponsive to their needs and interests.<sup>40</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 136.

<sup>37</sup> There are many other reasons why we have failed to act on climate change. For further discussion, see generally JAMIESON, *supra* note 5, at 61–103.

<sup>38</sup> Jonathan Boston & Frieder Lempp, *Climate Change: Explaining and Solving the Mismatch Between Scientific Urgency and Political Inertia*, 24 ACCT., AUDITING & ACCOUNTABILITY J. 1000, 1001 (2011); see JAMIESON, *supra* note 5, at 100.

<sup>39</sup> See Boston & Lempp, *supra* note 38, at 1000–11.

<sup>40</sup> See generally *Beyond Distrust: How Americans View Their Government*, PEW RESEARCH CENTER (Nov. 23, 2015), <http://www.people-press.org/2015/11/23/beyond-distrust-how-americans-view-their-government/>. On reasons for popular discontent in the United States, see generally Jill Lepore, *Richer and Poorer: Accounting for Inequality*, NEW YORKER (Mar. 16, 2015), <https://www.newyorker.com/magazine/2015/03/16/richer-and-poorer>.

A democratic deficit in many self-declared democracies has vividly been put on display in cases in which majority preferences have failed to be translated into policy. For example, in the United States, for at least the last twenty-five years, most Americans have favored stricter gun control laws, yet gun control laws have consistently been weakened.<sup>41</sup> In Italy, the outcomes of many popular referenda, including those regarding the introduction of legal liability for magistrates (1985, 80.2% in favor) and the abolition of public funding for political parties (1993, 90% in favor), have been ignored either flatly or through artful reformulation of existing legislation.<sup>42</sup>

The relation between majoritarianism and democracy is complex, and it would surely be a mistake to postulate that a democracy must enact every popular policy preference, or that every democratic institution must be majoritarian.<sup>43</sup> Still, it is hard to imagine a democracy that had no majoritarian governance institutions. Yet, if we accept this thought, then the democratic status of many countries that think of themselves as democracies is seriously in question.

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<sup>41</sup> See *Guns*, GALLUP NEWS, <http://news.gallup.com/poll/1645/guns.aspx> (last visited Dec. 19, 2017); Ed Pilkington, *NRA: 10 Ways It Has Weakened Gun-control Laws in the US*, GUARDIAN (Apr. 13, 2012, 2:58 PM), <https://www.theguardian.com/world/2012/apr/13/nra-weakened-gun-control-laws>. See generally Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSP. ON POL. 564, 570–75 (2014).

<sup>42</sup> See Davide Casati, *Referendum, e Ora? I Casi di Referendum Votati (e Ignorati)*, GQ ITALIA (June 14, 2011), <https://www.gqitalia.it/httpredir/r.php?q=/viral-news/articles/2011/6/referendum-cosa-cambia-ora-dopo-la-vittoria-dei-si-i-casi-precedenti-dal-finanziamento-pubblico-al-nucleare-ai-ministeri-di-turismo-e-agricoltura/>.

<sup>43</sup> See generally Stephen Macedo, *Against Majoritarianism: Democratic Values and Institutional Design*, 90 B.U. L. REV. 1029 (2010).

Consider, for example, the United States.<sup>44</sup> Of the three branches of federal government, the judicial branch is avowedly anti-majoritarian.<sup>45</sup> Until recently, many Americans probably regarded the presidency as a majoritarian institution despite the existence of the Electoral College, which many people regarded as simply “rubber stamping” the popular vote. This illusion has been shattered by the fact that two of the last five elections resulted in the winner of the popular vote being denied the presidency.<sup>46</sup> This leaves the Congress as the putative majoritarian institution in the United States’ federal government.<sup>47</sup> However, in the 2016 elections, Democrats won 56% of the aggregate national vote in Senate races, while Republicans won 65% of the seats.<sup>48</sup> According to a venerable American platitude, it is the House of Representatives that is “the People’s

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<sup>44</sup> The Economist reclassified the United States as a “flawed democracy” (as opposed to a “full democracy”) in 2016, largely due to eroding public confidence in American political institutions as documented in surveys by Gallup, Pew, and others. See *Declining Trust in Government is Denting Democracy*, ECONOMIST (Jan. 25, 2017), <https://www.economist.com/blogs/graphicdetail/2017/01/daily-chart-20>; see also Eric Zuesse, *Jimmy Carter Is Correct that the U.S. Is No Longer a Democracy*, HUFFINGTON POST: BLOG, [https://www.huffingtonpost.com/eric-zuesse/jimmy-carter-is-correct-t\\_b\\_7922788.html](https://www.huffingtonpost.com/eric-zuesse/jimmy-carter-is-correct-t_b_7922788.html) (last updated Aug. 3, 2016). While most Americans today think of the United States as a democracy at least in aspiration, the framers never took themselves to be designing a democracy in anything like the contemporary sense of the term. See *infra* Part III.B.

<sup>45</sup> Except, of course, among its members. See Helen J. Knowles, *Remember, It Is the Supreme Court That Is Expounding: The Least Dangerous Branch and Popular Constitutionalism*, 41 U. DAYTON L. REV. 33, 33 (2016). A cynic with a sense of irony might say that the Supreme Court practices a kind of “democratic centralism.” See Terrance Ball & Richard Dagger, *Politics: Democratic Centralism*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/democratic-centralism> (last updated Nov. 5, 2015).

<sup>46</sup> See Michael McAuliff et al., *Electoral College About to Screw Democrats for Second Time in 20 Years*, HUFFINGTON POST: POLITICS (Nov. 9, 2016, 2:00 PM), [https://www.huffingtonpost.com/entry/democrats-popular-vote-presidential\\_us\\_582246c4e4b0aac62487dde9](https://www.huffingtonpost.com/entry/democrats-popular-vote-presidential_us_582246c4e4b0aac62487dde9).

<sup>47</sup> See Mark A. Graber, *The Countermajoritarian Difficulty: From Courts to Congress to Constitutional Order*, 4 ANN. REV. LAW & SOC. SCI. 361, 372 (2008).

<sup>48</sup> These statistics were calculated using data from the Cook Political Report and Vital Statistics on Congress. See Molly E. Reynolds, *Republicans in Congress Got a Seats Bonus” This Election (Again)*, BROOKINGS: FIXGOV (Nov. 22, 2016), <https://www.brookings.edu/blog/fixgov/2016/11/22/gop-seats-bonus-in-congress/> (including the links to the Cook Political Report and Vital Statistics on Congress).

House”: members of the House of Representatives were the only federal officials to be directly elected by the people in 1789 and their charge is to represent the people of their districts rather than their states.<sup>49</sup> Yet, in the 2016 elections, Republicans won 48.7% of the aggregate vote in House races but won 55.4% of the seats.<sup>50</sup> While much more support would be needed to defend the claim that the United States is not a democracy, it is clear that there is currently no reliably majoritarian institution in the federal government.<sup>51</sup>

Consider a similar example from the United Kingdom.<sup>52</sup> In the 2017 election, the Conservatives won 42% of the aggregate vote but 49% of the parliamentary seats.<sup>53</sup> The Liberal Democrats won 7% of the vote but only 2% of the seats.<sup>54</sup> According to a recent study, Labour would have won the 2017 election under several voting systems used in other countries’ national elections that are more representative than Britain’s “First Past the Post” system.<sup>55</sup>

These results have led to a widespread perception of democratic deficits; this has contributed to the rise of so-called “populist” movements in many liberal democratic countries, including countries in the European Union, the United States, and others.<sup>56</sup> These movements and their leaders oppose existing power structures in the name

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<sup>49</sup> See U.S. CONST. art. I, § 2, cl. 1; U.S. CONST. art. II, § 1, cl. 3 (now superseded by U.S. CONST. amend XII); *The People of the People’s House*, HISTORY, ART & ARCHIVES: U.S. HOUSE REPRESENTATIVES, <http://history.house.gov/People/> (last visited Dec. 22, 2017).

<sup>50</sup> See Reynolds, *supra* note 48.

<sup>51</sup> See Zuesse, *supra* note 44.

<sup>52</sup> See, e.g., Ben Kentish, *Jeremy Corbyn Could Now Be Prime Minister if UK’s Electoral System Wasn’t ‘Broken’*, *Claims Study*, INDEPENDENT (Aug. 21, 2017, 3:38 PM), <http://www.independent.co.uk/news/uk/politics/jeremy-corbyn-uk-prime-minister-uk-electoral-system-broekn-first-past-post-labour-leader-theresa-may-a7905191.html>.

<sup>53</sup> JESS GARLAND & CHRIS TERRY, ELECTORAL REFORM SOCIETY, THE 2017 GENERAL ELECTION: VOLATILE VOTING, RANDOM RESULTS 11, <https://www.electoral-reform.org/uk/latest-news-and-research/publications/the-2017-general-election-report/>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 29–35, <https://www.electoral-reform.org/uk/latest-news-and-research/publications/the-2017-general-election-report/>. Previous British elections have been even worse at translating popular votes into parliamentary seats. *Id.*

<sup>56</sup> For an overview of populist phenomena across continents, see CAS MUDDE & CRISTÓBAL ROVIRA KALTWASSER, POPULISM: A VERY SHORT INTRODUCTION 21–41, 79–96 (2017). See also JAN-WERNER MÜLLER, WHAT IS POPULISM? 7–11

of the people, portray incumbents as inept and detached from citizens' everyday realities and needs, and advocate change by popular demand, circumventing entrenched institutional agents and procedures.<sup>57</sup> What is often characteristic of these leaders and movements is a yearning for a mythologized past of popular sovereignty in which politicians came from "the people," citizens' opinions were integral to the mechanisms of governance, citizens' needs and interests were the sole preoccupation of government, bureaucrats did not rule, and things actually got done.<sup>58</sup>

Populism can be a powerful democratizing force, especially at the early stage of democratization processes.<sup>59</sup> This can be seen in the rise of the Solidarity Labor Union in Poland, which resisted the Soviet regime, led the transition from communism to democratic elections, and won Poland's democratic election of 1989.<sup>60</sup> It can also be seen in the rise of the American Democratic Party, which was founded in 1828 during the wave of Jacksonian populism.<sup>61</sup> Populist leaders and movements typically begin their political ventures to defend groups of citizens they believe have been systematically neglected by incumbent elites.<sup>62</sup> Thus, some describe populism as a radical form of democracy and argue that the end of populism would mean the end of democratic politics itself.<sup>63</sup>

Populist leaders and movements champion the principle of popular sovereignty above all and typically defend some extreme form

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(2016); David Marquand, *The People is Sublime: The Long History of Populism, From Robespierre to Trump*, NEWSTATESMAN (July 24, 2017), <https://www.newstatesman.com/politics/uk/2017/07/people-sublime-long-history-populism-robespierre-trump>.

<sup>57</sup> Marquand, *supra* note 56.

<sup>58</sup> *See id.*

<sup>59</sup> *See* MUDDE & KALTWASSER, *supra* note 56, at 79–96 (discussing populism's democratic spirit and its role at different stages of the democratizing process).

<sup>60</sup> *See id.* at 88–89; *Solidarity: Polish Organization*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Solidarity> (last updated Jan. 27, 2016).

<sup>61</sup> *See* DAVID GRAEBER, *There Never Was a West: Or, Democracy Emerges from the Spaces in Between*, in *POSSIBILITIES: ESSAYS ON HIERARCHY, REBELLION, AND DESIRE* 329, 345 (2007).

<sup>62</sup> *See* Marquand, *supra* note 56.

<sup>63</sup> *See* Ernesto Laclau, *Populism: What's in a Name*, in *POPULISM AND THE MIRROR OF DEMOCRACY* 32, 47–49 (Francisco Panizza ed., 2005).

of majoritarianism.<sup>64</sup> Thus, populist movements are essentially democratic. However, they can be at odds with democracies that check and balance, or filter and buffer, popular sovereignty through institutions, including constitutions and bills of rights; bodies of experts, including judges, academics, and the professional press; administrative procedures, including bureaucratic procedures; partnerships with forces from civil society, including banks and businesses; and generally any power center not appointed by and accountable to the majority of the people.<sup>65</sup> As Mudde and Kaltwasser put it:

[P]opulism raises the question of who controls the controllers. As it tends to distrust any unelected institution that limits the powers of the *demos*, populism can develop into a form of democratic extremism or, better said, of illiberal democracy.<sup>66</sup>

The challenge of democracy and representation can be expressed as a dilemma that forces us to think about the very nature of democracy. Frustration with the failures of existing avowedly democratic states is leading to a resurgence of populism, which can be seen as a purer expression of democracy than the prevailing liberal democratic model.<sup>67</sup> But managing the problems of the Anthropocene requires a steadiness of outlook and a long-term perspective that seems in many ways antithetical to the populist posture. The fear is that we may be caught between political paralysis and paroxysms of extreme and arbitrary actions.

### III. DEMOCRACY OLD AND NEW

Dilemmas cannot always be solved. Sometimes we are fortunate if they can be managed. First of all, however, they must be understood.

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<sup>64</sup> See MUDDE & KALTWASSER, *supra* note 56, at 81.

<sup>65</sup> See generally MÜLLER, *supra* note 56, at 56–57.

<sup>66</sup> MUDDE & KALTWASSER, *supra* note 56, at 82.

<sup>67</sup> See McAuliff et al., *supra* note 46; André Munro, *Populism: Political Program or Movement*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/populism> (last updated Oct. 14, 2015); Uri Friedman, *What Is a Populist?*, ATLANTIC (Feb. 27, 2017), <https://www.theatlantic.com/international/archive/2017/02/what-is-populist-trump/516525/>.

In the broadest sense, democracy can be thought of as “[t]hat form of government in which the sovereign power resides in and is exercised by the whole body of free citizens.”<sup>68</sup> From its earliest days, democracy has tilted in two different directions.<sup>69</sup> In one direction, democracy is seen as embodying a procedure for political decision-making.<sup>70</sup> In the other direction, democracy is seen as embodying substantive values.<sup>71</sup> This tension, as well as some important sources of skepticism about democracy, go back to its ancient origins in Athens.<sup>72</sup>

#### A. *Democracy in the Ancient World*

Democracy in the substantive sense is captured in the words of Pericles, a politician, orator, and military leader who administered popular decisions in ancient Athens during the fifth century BC.<sup>73</sup>

Our constitution does not copy the laws of neighboring states; we are rather a pattern to others than imitators ourselves. Its administration favours the many instead of the few; this is why it is called a democracy. If we look to the laws, they afford equal justice to all in their private differences; if no social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, if a man is able to serve the state, he is not hindered by the obscurity of his condition. The freedom

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<sup>68</sup> *Democracy*, LAW DICTIONARY, <http://thelawdictionary.org/democracy/> (last visited Dec. 19, 2017).

<sup>69</sup> Jürgen Habermas, *Three Normative Models of Democracy*, in DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL 21, 21 (Seyla Benhabib ed., 1996).

<sup>70</sup> *Id.* at 21–23.

<sup>71</sup> *Id.*

<sup>72</sup> See *infra* Part III.A.

<sup>73</sup> See David Malcolm Lewis, *Pericles*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Pericles-Athenian-statesman> (last updated Apr. 21, 2017).



we enjoy in our government extends also to our ordinary life.<sup>74</sup>

For Pericles, the principle of popular sovereignty is supported by the principle of *isonomia*, or equality before the law, and enriched by the principle of *eleutheria*, or individual liberty.<sup>75</sup> Per Aristotle,

[A] basic principle of the democratic form of government is *eleutheria* . . . for every democracy has *eleutheria* as its aim. Ruling and being ruled in turn is one element of *eleutheria* . . . Another is to live as you like. For this, they say, is a function of being free, since living not as you like is the function of a slave.<sup>76</sup>

*Isonomia* and *eleutheria* are principles to which all contemporary liberal democrats subscribe.<sup>77</sup> In this respect, Pericles' democracy can be seen as an embryonic version of liberal democracy. However, Pericles' democracy was quite different from its liberal descendant.<sup>78</sup> In particular, liberal democracy adds a principle of civil and political equality whereby all individuals are born or created as equals and should be treated as equals by others, the government, and generally in the political process.<sup>79</sup> This principle is distinctly liberal and modern, and was absent from Pericles' proto-liberal democracy which reflected the intense concern of its citizens

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<sup>74</sup> As reported by the historian Thucydides in 2 THUCYDIDES, THE HISTORY OF THE PELOPONNESIAN WAR (Richard Crawley trans., 2009) (431 B.C.E.), <http://classics.mit.edu/Thucydides/pelopwar.html> (last visited Dec. 22, 2017).

<sup>75</sup> Robert W. Wallace, *Law, Freedom, and the Concept of Citizens' Rights in Democratic Athens*, in DEMOKRATIA: A CONVERSATION ON DEMOCRACIES, ANCIENT AND MODERN 105, 105 (Josiah Ober & Charles Hendrick eds., 1996).

<sup>76</sup> *Id.*

<sup>77</sup> See *infra* Part IV.

<sup>78</sup> Jennifer Roberts, *The Creation of Legacy: A Manufactured Crisis in Eighteenth-Century Thought*, in ATHENIAN POLITICAL THOUGHT AND THE RECONSTRUCTION OF AMERICAN DEMOCRACY 81, 82–83 (J. Peter Euben et al. eds., 1994).

<sup>79</sup> *E.g.*, THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). See generally Roberts, *supra* note 78, at 82–83.

for all “differences among individuals—differences between humans and animals, between males and females, between free people and slaves, between men who owned property and men who did not, and of course, between Greeks and non-Greeks.”<sup>80</sup> Women, slaves, and all those who were considered foreigners were excluded from voting in Athens.<sup>81</sup> Thus, the principles of popular sovereignty, equality before the law, and individual liberty applied only to a fraction of the population of Pericles’ Athens.<sup>82</sup> However, according to many ancient commentators, such as Plato and Aristotle, that was still far too much power in the hands of the people.<sup>83</sup>

While the Romans never adopted democracy, they invented republicanism—a mixed constitution capable of managing the tug-of-war between “the people” and “the elites” that has been replicated throughout Western history and is with us today.<sup>84</sup> Tasked with governing a far greater number of people than the government in Athens, with soldiers who were often more loyal to their generals than the state and slaves who were frequently uprising and rebelling, Rome was forced to provide the people with some form of political influence.<sup>85</sup> While the Romans incorporated selected elements of democracy in their constitution through mechanisms of representation, the Roman Senate surrounded these mechanisms with a net of constitutional, administrative, and other constraints that effectively and severely limited the people’s influence over legislation and policy, thus yielding a *de facto* oligarchy.<sup>86</sup> Throughout the duration of the Roman republic, most Roman rulers including the Senate, many plebeian tribunes, and other self-appointed champions of the people,

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<sup>80</sup> Roberts, *supra* note 78, at 83.

<sup>81</sup> Donald Kagan, *Periclean Athens and Modern Democracy*, AEI: POL. & PUB. OPINION (June 8, 1993), <http://www.aei.org/publication/periclean-athens-and-modern-democracy/>.

<sup>82</sup> DAVID HELD, *MODELS OF DEMOCRACY* 19 (3d ed. 2006).

<sup>83</sup> *See id.* at 17, 23–26 (discussing ancient criticisms of democracy).

<sup>84</sup> *See id.* at 28.

<sup>85</sup> *See* ANTONIO SANTOSUOSSO, *STORMING THE HEAVENS: SOLDIERS, EMPERORS, AND CIVILIANS IN THE ROMAN EMPIRE* 39–40 (2001); PHILIP MATYSZAK, *THE ENEMIES OF ROME: FROM HANNIBAL TO ATTLA THE HUN* 74–77 (2004).

<sup>86</sup> *See* HELD, *supra* note 82, at 28. *See generally* GRAEBER, *supra* note 61, at 345. For a comprehensive treatment of the history of Roman institutions, see generally FRANK FROST ABBOTT, *A HISTORY AND DESCRIPTION OF ROMAN POLITICAL INSTITUTIONS* (3d ed. 1911).

did not empower the people with any authentic mechanisms of self-governance, but rather used the people as pawns in their own power struggles.<sup>87</sup>

### B. *Modern Democracy*

Throughout history, most leaders and governments, including the Roman senators, did not adopt Pericles' enthusiastic view of democracy, but rather viewed it disparagingly and derogatorily as a form of government that indicated mob rule, "political disorder, rioting, lynching, and factional violence."<sup>88</sup> Still, instances of democracy in the procedural sense occurred in most, if not all, cultures across history, particularly at the local level and with respect to specific episodes of collective decision making.<sup>89</sup> However, democracy in the substantive sense was basically repudiated everywhere.

It was only in the late eighteenth- and early nineteenth-centuries that democracy in the substantive sense took on the positive connotation it has today.<sup>90</sup> Still, on the ground there was not much rule of the people.<sup>91</sup> Even the political regime produced by the American Revolution—and later celebrated in 1863 by Abraham Lincoln in the Gettysburg Address as being "of the people, by the people, [and] for the people"<sup>92</sup>—was modeled on the republic of pre-imperial Rome rather than Pericles' democracy: it was (and still is) a mixed constitution that balanced monarchical, aristocratic, and democratic elements.<sup>93</sup> It envisioned a powerful, indirectly elected president, a

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<sup>87</sup> See MANUS I. MIDLARSKY, *THE EVOLUTION OF INEQUALITY: WAR, STATE SURVIVAL, AND DEMOCRACY IN COMPARATIVE PERSPECTIVE* 151–52 (1999).

<sup>88</sup> GRAEBER, *supra* note 61, at 330, 345.

<sup>89</sup> See *id.* at 356; Francis Dupuis-Déri, *The Political Power of Words: The Birth of Pro-democratic Discourse in the Nineteenth Century in the United States and France*, 52 *POL. STUD.* 118, 120–23 (2004); see also Roberts, *supra* note 78, at 82–83.

<sup>90</sup> See GRAEBER, *supra* note 61, at 330–31; Dupuis-Déri, *supra* note 89, at 118; John Markoff, *Where and When Was Democracy Invented?*, 41 *COMP. STUD. SOC'Y & HIST.* 660, 663–65 (1999).

<sup>91</sup> See Dupuis-Déri, *supra* note 89, at 121.

<sup>92</sup> Abraham Lincoln, *The Gettysburg Address* (Nov. 19, 1863), in *THE WORLD ALMANAC AND BOOK OF FACTS 2004*, at 1335, 1335 (William A. McGeeveran et al. eds., 2004).

<sup>93</sup> GRAEBER, *supra* note 61, at 345; see Ellen Meiksins Wood, *Demos Versus "We, the People": Freedom and Democracy Ancient and Modern*, in

house representing the people, and a deliberative, indirectly elected senate representing the states.<sup>94</sup> As Markoff has noted, even the revolutionary elites that

called themselves democrats at the tail end of the eighteenth century were likely to be very suspicious of parliaments, downright hostile to competitive political parties, critical of secret ballots, uninterested or even opposed to women's suffrage, and sometimes tolerant of slavery.<sup>95</sup>

In addition, because modern nation-states, unlike ancient Athens and more similarly to Rome, were far too large to be directly ruled by their people, institutional agents were created to mediate the decisions and actions of citizens and to resolve conflicts between them.<sup>96</sup> These mediating agents took different forms, and democratic polities became more or less representative rather than direct.<sup>97</sup> In most cases where the people could be said to rule at all, they ruled only indirectly by occasionally voting for their representatives—often with unequal voting power.<sup>98</sup> In the United States, for

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DEMOKRATIA: A CONVERSATION ON DEMOCRACIES, ANCIENT AND MODERN, *supra* note 75, at 121, 124–29, 131–35; *see also* Markoff, *supra* note 90, at 665.

<sup>94</sup> GRAEBER, *supra* note 61, at 345; *see* Wood, *supra* note 93, at 124–29, 131–35.

<sup>95</sup> Markoff, *supra* note 90, at 661. *See generally* Dupuis-Déri, *supra* note 89, at 120–31.

<sup>96</sup> *See* Wood, *supra* note 93, at 124–29.

<sup>97</sup> *See id.* This loss in direct control opens the door to concentration of unchecked power and rent-seeking by representatives. One solution was to fragment power by institutional architecture, separating legislation from execution and adjudication. The idea was to restrict the authority of each branch of the government by pitting it against the independent authority of each of the other branches. *See* Peter M. Shane, *Executive Branch Self-Policing in Times of Crisis: The Challenges for Conscientious Analysis*, 5 J. NAT'L SECURITY & POL'Y 507, 519 (2012). Though both the Greeks and the Romans had already introduced various forms of separation of powers in their political systems, modern democracy (especially in the United States) made separation of powers into one of its structural cornerstones. *See id.* Much inspiration came from the French intellectual Montesquieu's theory of "checks and balances". *See* 1 BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* 185–98 (Neill H. Alford, Jr. et al. eds., The Legal Classics Library ed. 1984) (1748)

<sup>98</sup> *See* Wood, *supra* note 93, at 124–29; *see also* McAuliff et al., *supra* note 46.

example, the principle of one person/one vote was not established until the 1960s by a series of Supreme Court decisions.<sup>99</sup>

By the nineteenth-century in the West, elected legislatures had acquired unprecedented sway against hereditary and class lineages, unprecedented numbers of people were enfranchised, and politicians were increasingly forced to court small farmers and urban workers for their votes.<sup>100</sup> It was only at this juncture that government leaders began to portray themselves as heirs to Pericles and speak of his democracy as embodying an honorable ideal of public participation rather than an incubus of violent mob rule.<sup>101</sup>

The democratic narrative became that of a political regime characterized by ordinary folks collectively managing their own affairs, informed by an egalitarian distribution of political power, and sustained by ongoing participation.<sup>102</sup> Whatever the case on the ground, this narrative conquered the hearts and minds of people the world over and has established democracy as a central political value in the twentieth- and now the twenty-first centuries.<sup>103</sup>

#### IV. LIBERAL DEMOCRACY

What has most strongly powered and sustained the democratic narrative, best reaffirmed and expanded the values of liberty and equality that Pericles trumpeted almost two millennia earlier, and reinforced popular demands and hopes that the democratic narrative

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<sup>99</sup> The central Supreme Court decisions are *Baker v. Carr* in 1962 and *Reynolds v. Sims* in 1964. *Baker v. Carr*, 369 U.S. 186, 209 (1962) (holding that challenges to legislative redistricting under the Equal Protection Clause of the Constitution are justiciable); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (holding that the Equal Protection Clause requires state legislature seats to be apportioned based on the state's population and must give equal weight to one vote for every one person). Even today, voting power is highly variable depending on where one lives. For one way of calculating voting power, see Richie Bernardo, *2016's States with the Most and Least Powerful Voters*, WALLETHUB (Oct. 17, 2016), <https://wallethub.com/edu/how-much-is-your-vote-worth/7932/>.

<sup>100</sup> GRAEBER, *supra* note 61, at 345.

<sup>101</sup> See Arlene W. Saxonhouse, *Athenian Democracy: Modern Mythmakers and Ancient Theorists*, 26 PS: POL. SCI. & POL. 486, 487–88 (1993).

<sup>102</sup> See the discussion of John Dewey *infra* Part IV.

<sup>103</sup> See Amartya Sen, *Democracy as a Universal Value*, 10 J. DEMOCRACY 3, 3–4, 10–16 (1999).

would be realized in practice was the rise of the ideal of liberal democracy. While other countries had anticipated and advocated liberal democracy,<sup>104</sup> it became especially influential in the United States in the 1920s with the work of John Dewey.<sup>105</sup>

Dewey's vision was of democracy as a collective experiment conducted by citizens through informed dialogue.<sup>106</sup> His democratic ideal depicts citizens approaching collective governance in the open, impartial, and empirically sensitive way that is characteristic of modern science.<sup>107</sup> For the experiment to succeed, citizens must be free, educated, and (at least to some degree) self-realized.<sup>108</sup> Democracy is not just a decision procedure, but a "way of life":

[t]he key-note of democracy as a way of life . . . [is] the necessity for the participation of every mature human being in formation of the values that regulate the living of men together:—which is necessary from the standpoint of both the general social welfare and the full development of human beings as individuals.<sup>109</sup>

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<sup>104</sup> The great precursors of liberal democracy were John Stuart Mill (1859 and 1861) and Immanuel Kant. See generally IMMANUEL KANT, *THE METAPHYSICAL ELEMENTS OF JUSTICE: THE COMPLETE TEXT OF THE METAPHYSICS OF MORALS, PART I* (John Ladd trans., Hackett Publ'g Co. 2d ed. 1999) (1797); see *infra* text accompanying note 110.

<sup>105</sup> For a sharp and concise statement of Dewey's political philosophy, see 2 JOHN DEWEY, *The Public and Its Problems* [hereinafter *The Public and Its Problems*], in JOHN DEWEY: *THE LATER WORKS, 1925–1953*, at 235, 238–39 (Jo Ann Boydston & Bridget A. Walsh eds., 1984). For a discussion on Dewey's role in the development of American democracy, see generally ROBERT B. WESTBROOK, *JOHN DEWEY AND AMERICAN DEMOCRACY ix–xviii* (1991); ALAN RYAN, *JOHN DEWEY AND THE HIGH TIDE OF AMERICAN LIBERALISM 19–34* (1995); DAVID FOTT, *JOHN DEWEY: AMERICA'S PHILOSOPHER OF DEMOCRACY 1* (1998).

<sup>106</sup> Richard J. Bernstein, *Creative Democracy—The Task Still Before Us*, 21 *AM. J. THEOLOGY & PHIL.* 215, 217 (2000).

<sup>107</sup> See *id.*

<sup>108</sup> See *id.* at 217–21.

<sup>109</sup> 11 JOHN DEWEY, *Democracy and Educational Administration*, in JOHN DEWEY: *THE LATER WORKS, 1925–1953*, at 217, 217–18 (Jo Ann Boydston et al. eds., 2008). In thinking of democracy as a way of life, Dewey was following Mill who wrote that a democratic political system makes the best use of the "moral, intellectual, and active worth already existing, so as to operate with the greatest effect on public affairs" and fosters the "advancement of the community . . . in intellect, in virtue, and in practical activity and efficiency" more fully than any

Dewey was an egalitarian, a vigorous defender of civil liberties, and an advocate for unions and progressive public education.<sup>110</sup> He thought that if democracy was to succeed, it was incumbent on government to create the conditions under which it could thrive.<sup>111</sup>

Dewey's kind of comprehensive liberalism is often regarded as democracy's natural home. As Pericles and Aristotle recognized, once a value like *eleutheria* (individual liberty) has been accepted, a large step has been taken towards also accepting popular sovereignty. For without popular sovereignty, individuals would be relinquishing some of their liberty to an uncontrolled power that may not, in fact, serve their needs.

Yet liberalism and democracy are distinct intellectual traditions with different histories, whose respective priorities do not always overlap. As Thomas Nagel writes:

Liberalism [by which he means liberal democracy in our sense] is the conjunction of two ideals. The first is that of individual liberty: liberty of thought, speech, religion, and political action; freedom from government interference with privacy, personal life, and the exercise of individual inclination. The second ideal is that of a democratic society controlled by its citizens and serving their needs . . . . To approach either of these ideals is very difficult. To pursue both of them inevitably results in serious dilemmas.<sup>112</sup>

Democracy's primary commitment is to popular sovereignty, while liberalism primarily values individual liberty.<sup>113</sup>

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other political system. JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 27–28 (Curren V. Shields ed., Bobbs-Merrill Co., Inc. 1958) (1861).

<sup>110</sup> See Bernstein, *supra* note 106, at 217–18, 220. See generally James Gouinlock, *Introduction* to 2 JOHN DEWEY: *THE LATER WORKS, 1925–1953*, *supra* note 109, at ix, ix–xxxvi; John J. McDermott, *Introduction* to 11 JOHN DEWEY: *THE LATER WORKS, 1925–1953*, *supra* note 109, at xi, xi–xxxii.

<sup>111</sup> See Bernstein, *supra* note 106 at 217, 220, 226.

<sup>112</sup> Thomas Nagel, *Libertarianism Without Foundations*, 85 *YALE L.J.* 136, 136 (1975) (reviewing ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974)).

<sup>113</sup> See CHANTAL MOUFFE, *THE DEMOCRATIC PARADOX* 2–3 (2000). The work of Daniel Bell explores the relationships between democracy, human rights, and

The problem is that popular sovereignty can be realized at the expense of individual liberty, and individual liberty can frustrate popular sovereignty. These conflicts can break out in a glaring way in cases signaled by the expression “tyranny of the majority.”<sup>114</sup> In a system in which having the numbers means getting what you want, the door is open for oppressive legislation over those who do not have the numbers.<sup>115</sup> Those may be the rich minority, as feared by Aristotle, the Roman senators, and later by American President James Madison;<sup>116</sup> or the educated minority, as Plato and Mill suggested;<sup>117</sup> or some ethnic and cultural minority, as the Jews of democratically constituted Nazi Germany tragically learned.<sup>118</sup>

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Asian cultural traditions, illuminating respects in which they fit together and respects in which they are quite distinct and even antagonistic. *See, e.g.*, DANIEL A. BELL, *EAST MEETS WEST: HUMAN RIGHTS AND DEMOCRACY IN EAST ASIA* 158–215 (2000).

<sup>114</sup> The phrase “tyranny of the majority” was first used by John Adams. JOHN ADAMS, *A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA* (1787), *reprinted in* 6 *THE WORKS OF JOHN ADAMS* 3, 63 (Boston, Little, Brown & Co. 1851). The problem was also discussed by Edmund Burke in *Reflections on the Revolution in France*, and then by John Stuart Mill in *On Liberty*. *See* EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* (1790), *reprinted in* 2 *SELECT WORKS OF EDMUND BURKE* 85, 224–26 (2010); JOHN STUART MILL, *ON LIBERTY* 73, 76 (David Bromwich & George Kateb eds., Yale Univ. Press 2003) (1859). In discussing this problem, Ayn Rand argued that “[i]ndividual rights [should] not be subject to a public vote,” and that “the political function of rights is precisely to protect minorities from oppression by majorities,” with the smallest minority being the individual. *See* AYN RAND, *Collectivized “Rights,” in THE VIRTUE OF SELFISHNESS: A NEW CONCEPT OF EGOISM* 96, 99 (1964). This eminently liberal thought was a cornerstone of Ronald Dworkin’s work. *See generally* RONALD DWORIN, *TAKING RIGHTS SERIOUSLY* 163–84, 223–48, 311–18 (1977).

<sup>115</sup> Dewey’s great interlocutor, Walter Lippmann, wrote that “an election based on the principle of majority rule is historically and practically a sublimated and denatured civil war.” WALTER LIPPMANN, *THE PHANTOM PUBLIC* 48 (Russell Kirk ed., Transaction Publishers 1993) (1927).

<sup>116</sup> *See* HELD, *supra* note 82, at 15–17; ABBOTT, *supra* note 86, at 77–80; *THE FEDERALIST* NO. 54, at 280 (James Madison) (Ian Shapiro ed., 2009) (“If the law allows an opulent citizen but a single vote in the choice of his representative, the respect and consequence which he derives from his fortunate situation very frequently guide the votes of others to the objects of his choice; and through this imperceptible channel the rights of property are conveyed into the public representation.”).

<sup>117</sup> *See* HELD, *supra* note 82, at 23–27; MILL, *supra* note 109, at 135–43.

<sup>118</sup> *See* MUDDE & KALTWASSER, *supra* note 56, at 83–84, 109.



Liberal democracy's solution to the conflict between popular sovereignty and liberal ideals (such as liberty itself) is to construct independent institutions whose role is to protect liberal values, often in the form of rights to liberty of expression, property, freedom of association, and so on.<sup>119</sup> By adopting constitutions, bills of rights, courts, expert bodies, administrative procedures and other mechanisms, liberal democracy protects and promotes a range of values (including competence and efficiency) that are often neglected or put at risk by more immediately majoritarian forms of democracy.<sup>120</sup> These mechanisms buffer popular influence. They insulate law and policy (at least to some extent) from the transient opinions of citizens. Ironically, and perhaps paradoxically, liberal democracy protects liberal values by limiting popular sovereignty. In this very specific but important sense, these buffering mechanisms (constitutions, bills of rights, courts, expert bodies, administrative procedures, etc.), which are part-constitutive of liberal democracy, are themselves non-democratic.

Whatever their ironies and paradoxes, liberal democracies have considerable strengths. One strength is their capacity to ensure that the needs and interests of citizens are taken into consideration during collective decision making, while at the same time providing a clear way (i.e., majority rule) to make decisions even in the face of disagreement.<sup>121</sup> Liberal democracies are inclusive and can be efficient,

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<sup>119</sup> See generally THE FEDERALIST NO. 51, at 265–66 (James Madison) (Ian Shapiro ed., 2009) (“It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable.”).

<sup>120</sup> For discussion of the great variation that exists among liberal democracies with respect to these institutions, see generally HELD, *supra* note 82, at 1–8, 123–256, 275–84.

<sup>121</sup> Cf. *The Public and Its Problems*, *supra* note 105, at 364 (“The strongest point to be made in behalf of even such rudimentary political forms as democracy has already attained, popular voting, majority rule and so on, is that to some extent they involve a consultation and discussion which uncover social needs and troubles.”).

at least relative to some alternatives. In addition, liberal democracy realizes some forms of equality; this may be because democracy is a peaceful and fair compromise among bearers of conflicting claims, realized by each having an equal say over decision making,<sup>122</sup> or because democracy “publicly embodies the equal advancement of the interests of the citizens of a society when there is disagreement about how best to organize their shared life.”<sup>123</sup> A further strength of liberal democracy is its capacity to harness the precious resource of diffused knowledge: the fragmentation of decisional powers that characterize democratic regimes promotes an increase in decisional competence of the system as a whole.<sup>124</sup> Yet another strength of democracy is its capacity to contribute to the development and exercise of fine human capacities including initiative, engagement, self-reliance, rational thinking, autonomy, and respect for others.<sup>125</sup>

Other strengths of democracy become apparent on the assumption that all people are (born or created) free.<sup>126</sup> Once this idea is accepted, democracy appears to be the only (or at least the most) legitimate form of government. In a democracy, citizens can freely author their own laws through collective decision-making. Considering the extent to which laws affect the lives of individuals, it is only when individuals can be said to be the authors of such laws, as democracy allows them to be, that individuals can really be said to be masters of their own lives as liberalism maintains that they are and should be.

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<sup>122</sup> See generally PETER SINGER, *DEMOCRACY AND DISOBEDIENCE* 30–41 (1973); JEREMY WALDRON, *LAW AND DISAGREEMENT* 235–39 (1999).

<sup>123</sup> Tom Christiano, *Democracy*, *STAN. ENCYCLOPEDIA PHIL.* § 2.2.3 (Edward N. Zalta ed., 2015), <https://plato.stanford.edu/entries/democracy/>.

<sup>124</sup> See generally MILL, *supra* note 109, at 25–28; JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS: AN ESSAY IN POLITICAL INQUIRY* 171–205 (Melvin L. Rogers ed., 2016) (1927).

<sup>125</sup> See MILL, *supra* note 109, at 27–30; see also Jon Elster, *The Market and the Forum: Three Varieties of Political Theory*, in *PHILOSOPHY AND DEMOCRACY: AN ANTHOLOGY* 138, 152 (Thomas Christiano ed., 2003).

<sup>126</sup> E.g., *THE DECLARATION OF INDEPENDENCE* para. 2 (U.S. 1776); G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948). This assumption is widely shared by liberals, but often in the breach as we see from the existence of slavery in societies that claim to be liberal. See generally GERALD F. GAUS, *JUSTIFICATORY LIBERALISM: AN ESSAY ON EPISTEMOLOGY AND POLITICAL THEORY* 161, 162–66 (1996) (discussing the normative primacy of liberty for liberals).

## V. DEMOCRACY'S VULNERABILITIES

Despite these strengths, democracy in all its forms is subject to numerous vulnerabilities. Many of these vulnerabilities were known in the ancient world and were also discussed by modern philosophers. In Part IV, we mentioned one particular vulnerability: the risk to individual liberty that democracy can present. In this Part, we discuss three further vulnerabilities of democracy: a lack of governance expertise, voter ignorance, and instability.

### A. *Lack of Governance Expertise*

Plato saw major problems in democracy and thought that these problems were guaranteed to drive democracies towards demagoguery and tyranny.<sup>127</sup> His general worry was that democracy undermines governance expertise because it requires those who run for office to develop and exercise a different set of skills than those required for good governance; namely, skills functional to the harnessing of votes to win elections.<sup>128</sup> Metaphorically equating a polity to a ship, a competent ruler (by which Plato meant a philosopher) to a captain, and citizens to sailors, Plato wrote:

They throng about the captain, begging and praying him to commit the helm to them . . . Him who is their partisan and cleverly aids them in their plot for getting the ship out of the captain's hands into their own whether by force or persuasion, they compliment with the name of sailor, pilot, able seaman, and abuse the other sort of man, whom they call a good-for-nothing; but that the true pilot must pay attention to the year and seasons and sky and stars and winds, and whatever else belongs to his art, if he intends to be really qualified for the command of a ship, and that he must and will be the steerer, whether other

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<sup>127</sup> See PLATO, *Despotism and the Despotical Man* [hereinafter *Despotism and the Despotical Man*], in THE REPUBLIC OF PLATO 287, 288 (Francis Macdonald Cornford trans., Oxford Univ. Press 1945) (1941). Plato's classic critique of democracy is in Book VIII of *The Republic*. Plato, *The Republic: Book VIII*, INTERNET CLASSIC ARCHIVE (last visited Dec. 18, 2017), <http://classics.mit.edu/Plato/republic.9.viii.html> [hereinafter *Book VIII*].

<sup>128</sup> See Christiano, *supra* note 123, at § 2.1.2.

people like or not—the possibility of this union of authority with the steerer’s art has never seriously entered into their thoughts or been made part of their calling.<sup>129</sup>

Plato had controversial and even conceited views about democracy, but here he seems to make a structural rather than ideological point. Democracy does not ultimately require governance proficiency as a condition for running for or holding office: it only requires that offices be won by popular vote. There is no reason to believe that those who are proficient at winning elections are proficient at governing.<sup>130</sup>

Plato also doubted the governance abilities of the people.<sup>131</sup> He suspected that it was not congenial to most people to engage in the disciplined training required to understand enough of the world and oneself to be competent self-governors.<sup>132</sup> Ultimately, Plato thought most people want to be left alone, attend to their business and crafts, and enjoy themselves as they please.<sup>133</sup> Worse still, people can be pleased by all sorts of things in erratic and inconsistent ways. Here is Plato’s description of “the democratic man”:

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<sup>129</sup> Plato, *The Republic: Book VI*, INTERNET CLASSIC ARCHIVE (last visited Dec. 18, 2017), <http://classics.mit.edu/Plato/republic.7.vi.html> [hereinafter *Book VI*].

<sup>130</sup> It has become a trope in recent politics that Republicans are good at winning elections and terrible at governing, while Democrats are good at governing but bad at winning elections. See Julia Azari, *Why Republicans Can’t Govern*, FIVETHIRTYEIGHT (Sept. 11, 2017, 5:56 AM), <https://fivethirtyeight.com/features/why-republicans-cant-govern/>; Harry Enten, *Democrats Shouldn’t Count on an Unpopular Trump to Win Back Governorships*, FIVETHIRTYEIGHT (Dec. 2, 2016, 7:00 AM), <https://fivethirtyeight.com/features/democrats-shouldnt-count-on-an-unpopular-trump-to-win-back-governorships/>.

<sup>131</sup> See PLATO, *The Philosopher King* [hereinafter *The Philosopher King*], in THE REPUBLIC OF PLATO, *supra* note 127, at 175, 175–263; PLATO, *Democracy and the Democratic Man* [hereinafter *Democracy and the Democratic Man*], in THE REPUBLIC OF PLATO, *supra* note 127, at 279, 284–86.

<sup>132</sup> See *Democracy and the Democratic Man*, *supra* note 131, at 279, 284–86. See generally *The Philosopher King*, *supra* note 131, at 175, 175–263.

<sup>133</sup> This is an important theme in Plato’s Allegory of the Cave. See PLATO, *The Allegory of the Cave*, in THE REPUBLIC OF PLATO, *supra* note 127, at 227, 227–35.

[H]e lives from day to day indulging the appetite of the hour; and sometimes he is lapped in drink and strains of the flute; then he becomes a water-drinker, and tries to get thin; then he takes a turn at gymnastics; sometimes idling and neglecting everything, then once more living the life of a philosopher; often he is busy with politics, and starts to his feet and says and does whatever comes into his head; and, if he is emulous of anyone who is a warrior, off he is in that direction, or of men of business, once more in that. His life has neither law nor order; and this distracted existence he terms joy and bliss and freedom; and so he goes on.<sup>134</sup>

A people composed of such inconsistent and undisciplined individuals, Plato thought, is prone to miscalculate priorities and may also be easily manipulated by those who have the will, ability, and means.<sup>135</sup> The result may be that the interests most tended to may not be the people's but rather those advanced by the groups or individuals best organized and equipped to perpetrate the manipulation.<sup>136</sup>

Plato may have been overly pessimistic about “the democratic man” and unduly deterministic in predicting democracy's inevitable path towards demagoguery and tyranny.<sup>137</sup> Yet even an otherwise critical reader cannot entirely ignore the aptness of Plato's ship metaphor when observing the current rise of populist figures or movements in contemporary liberal democracies. Much like “him who is their partisan and cleverly aids them in their plot for getting the ship

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<sup>134</sup> *Book VIII, supra* note 127.

<sup>135</sup> *See Democracy and the Democratic Man, supra* note 131, at 279, 284–86. *See generally The Philosopher King, supra* note 131, at 175, 175–263.

<sup>136</sup> *See Book VI, supra* note 129. Plato had witnessed the feats of Alcibiades—a rich, persuasive, and reckless young man—who, during the Peloponnesian war against Sparta, convinced the Athenians to embark on the most ambitious maritime assault the city had ever attempted against Syracuse in Eastern Sicily, an ally and main food supplier of Sparta. The expedition was a failure and marked the beginning of Athens' defeat in the war and overall decline. Russell Meiggs, *Alcibiades*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Alcibiades-Athenian-politician-and-general> (last updated June 28, 2017).

<sup>137</sup> *Democracy and the Democratic Man, supra* note 131, at 279–86; *Despotism and the Despotical Man, supra* note 127, at 287–88; *Book VI, supra* note 129.

out of the captain's hands into their own," these figures or movements often present themselves as the people's champions, are skillful in harnessing votes, rail against the current inefficacy of democratic institutions in tackling urgent problems, and boast about their own powers while also downplaying or even denying the importance of experts for good governance.<sup>138</sup>

### B. *Voter Ignorance*

Another vulnerability of democracy that has worried commentators since its invention is voter ignorance. Whatever failures citizens may have with respect to governance may seem to be magnified by their high levels of ignorance.<sup>139</sup>

Plato was first in line here,<sup>140</sup> but champions of democracy who had a much more optimistic view of "the democratic man," such as John Stuart Mill, also had concerns about voter ignorance.<sup>141</sup> While an advocate of universal suffrage, Mill proposed that people with university degrees and intellectually demanding jobs be given extra votes.<sup>142</sup> While most democrats today would recoil in horror from such a suggestion, many democracies have in fact welcomed it in some way. For example, until 1950, some British universities had their own parliamentary constituencies, thus effectively allowing the educated to vote twice—once at their university and once in their place of residency.<sup>143</sup> The Italian Senate still includes "life sena-

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<sup>138</sup> See *Book VI*, *supra* note 129; Marquand, *supra* note 56.

<sup>139</sup> See generally DANNY OPPENHEIMER & MIKE EDWARDS, *DEMOCRACY DESPITE ITSELF: WHY A SYSTEM THAT SHOULDN'T WORK AT ALL WORKS SO WELL* 89–90 (2012). For specific examples regarding the ignorance of Americans, see JENNIFER L. HOCHSCHILD & KATHERINE LEVINE EINSTEIN, *DO FACTS MATTER?: INFORMATION AND MISINFORMATION IN AMERICAN POLITICS* 16–17 (2015).

<sup>140</sup> Plato's critique is echoed by Roy Aleksandrovich Medvedev, "Stalin was supported by the majority of the Soviet people both because he was clever enough to deceive them and because they were backward enough to be deceived." ROY MEDVEDEV, *LET HISTORY JUDGE: THE ORIGINS AND CONSEQUENCES OF STALINISM* 712 (George Shriver ed., trans., 1989).

<sup>141</sup> See MILL, *supra* note 109, at 127–47.

<sup>142</sup> *Id.* at 135–38.

<sup>143</sup> See Caleb Crain, *The Case Against Democracy*, *NEW YORKER* (Nov. 7, 2016), <https://www.newyorker.com/magazine/2016/11/07/the-case-against-democracy>.

tors—who are appointed by the President of the Republic ‘for outstanding merits in the social, scientific, artistic or literary field.’”<sup>144</sup> In the United States, voter literacy tests have never been definitively banned, though they are not currently used in any jurisdiction.<sup>145</sup>

John Dewey took the issue of voter ignorance as a reason to insist on the central political importance of education in and for democracies, as well as of a free press that would help circulate information.<sup>146</sup> Others took an entirely different approach. For example, Joseph Schumpeter’s elitist theory has it that democratic political leaders should make policy and law with little regard for citizens’ opinions and even demands, since these are fickle and incoherent.<sup>147</sup> This effectively excludes citizens from governing and restricts their role to confirming or rejecting political leaders—still a significant, but clearly quite limited form of popular sovereignty.

Voter ignorance is hardly a surprise. Public choice theorists have argued that citizens will typically not be well-informed about political issues, nor particularly motivated to gather relevant information—rationally so, given the virtually null impact of any single vote on the outcomes of elections.<sup>148</sup> Some political scientists and economists, while acknowledging voter ignorance, have claimed

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<sup>144</sup> *Parliament*, SENATO DELLA REPUBBLICA, <https://www.senato.it/3801> (last visited Dec. 19, 2017).

<sup>145</sup> Historically literacy tests in the United States were used to disenfranchise minorities, especially African-Americans. *Primary Documents in American History: 15th Amendment to the U.S. Constitution*, LIBRARY OF CONGRESS, <https://www.loc.gov/rr/program/bib/ourdocs/15thamendment.html> (last visited Dec. 24, 2017). Since the Civil Rights Act of 1964 a body of law has developed to prevent literacy tests from being used for this purpose. *See id.*

<sup>146</sup> *See generally The Public and Its Problems*, *supra* note 105, 325–72; LIPPMANN, *supra* note 115, at 12–29 (demonstrating skepticism that education could remedy the ills of democracy).

<sup>147</sup> *See generally* JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 250–68 (3d ed. 1950).

<sup>148</sup> *See, e.g.*, ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 238–59 (1957); Harry Cheadle, *An Expert Explains Why Your Vote Won’t Matter*, VICE (Aug. 29, 2016, 12:00 AM), [https://www.vice.com/en\\_us/article/avaek4/voters-dont-know-anything-and-your-vote-wont-matter](https://www.vice.com/en_us/article/avaek4/voters-dont-know-anything-and-your-vote-wont-matter). However, in the 2018 election, control of the Virginia House of Delegates turned on a single vote. Ian Simpson, *Democrat loses bid to overturn tie in key Virginia House race*, REUTERS (Jan. 3, 2018, 1:08 PM), <https://www.reuters.com/article/us-virginia-election/democrat-loses-bid-to-overturn-tie-in-key-virginia-house-race-idUSKBN1ES1NP>.

that it is not a problem, as indicated by the successes of democracy.<sup>149</sup> Various explanations have been put forward about how voter ignorance and successful governance manage to peacefully co-exist.<sup>150</sup> Some theorists are in thrall to ideas about the “wisdom of crowds.”<sup>151</sup> On this view, epistemologically compromised people make better decisions collectively than they would individually.<sup>152</sup>

Knowledge and experience does lead voters to revise their preferences.<sup>153</sup> Moreover, how we feel about decisions made from ignorance might depend on what the alternatives are.<sup>154</sup> In my case, what we know from analyses of the 2016 United States presidential election is that voters’ sense of identity drove their voting behavior more than knowledge of the issues or policy preferences anyway.<sup>155</sup>

From here, it is easy to see how voter ignorance can be seen as a problem, one that is especially relevant to the recent rise of populist figures and movements in liberal democracies, at least insofar as voter ignorance can be manipulated as well as fomented.<sup>156</sup> For example, voter ignorance is manipulated when debaters rely on charisma, pathos and inflammatory rhetoric, rather than fact-based, coolly-reasoned discourse.<sup>157</sup> It is fomented when contestation of the role of experts is promoted—an issue to which we shall return in Section VI.D.

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<sup>149</sup> See generally OPPENHEIMER & EDWARDS, *supra* note 139, at 9–38, 177–202, 223–30; MORRIS P. FIORINA, RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS 4–5 (1981).

<sup>150</sup> See generally FIORINA, *supra* note 149, at 3–19.

<sup>151</sup> The idea of the “wisdom of crowds” was first put forward by Francis Galton, and popularized recently by James Surowiecki. See generally Francis Galton, *Vox Populi*, 75 NATURE 450, 451 (1907); JAMES SUROWIECKI, THE WISDOM OF CROWDS xi–xv, 269–71 (2004).

<sup>152</sup> See generally Galton, *supra* note 151, at 451.

<sup>153</sup> See HOCHSCHILD & EINSTEIN, *supra* note 139, at 23–27.

<sup>154</sup> See generally OPPENHEIMER & EDWARDS, *supra* note 139, at 119–32.

<sup>155</sup> See generally John Sides et al., *The 2016 U.S. Election: How Trump Lost and Won*, 28 J. DEMOCRACY 34, 34–37 (2017).

<sup>156</sup> See MUDDE & KALTWASSER, *supra* note 56, at 62–68, 103–04.

<sup>157</sup> See *id.* at 63–68 (discussing the exploitation of charisma by populist figures). For a glossary of pathos-based rhetorics, see Richard Nordquist, *Pathos (Rhetoric): Glossary of Grammatical and Rhetorical Terms*, THOUGHTCO. (last updated Oct. 28, 2016), <https://www.thoughtco.com/pathos-rhetoric-1691598>.



### C. *Instability*

Thomas Hobbes identified instability as another vulnerability of democracy.<sup>158</sup> Indeed, Hobbes thought that democracy, though indeed a distinct form of government, was not much of an improvement upon the anarchic state of nature as it tended to replicate rather than neutralize important drivers of the war of all against all, including competition and vanity.<sup>159</sup> For this reason, a democracy is constantly at risk of relapsing into anarchy or turning into an “aristocracy of orators, interrupted sometimes with the temporary monarchy of one orator.”<sup>160</sup>

Democracy fosters competition because legislating in a democracy is such an inclusive enterprise. Politicians, as well as citizens, will tend not to feel personally responsible for the quality of legislation, insofar as no one among the voters or their representatives singularly makes any significant difference to the outcomes of legislation.<sup>161</sup> In this way, the concerns of citizens as well as politicians will be deflected from the common good and instead fixed onto the competition for power and the pursuit of partisan or private interests.<sup>162</sup>

Democracy fosters vanity because it holds out the promise that each citizen can promote his or her own interests through the political process.<sup>163</sup> Hobbes says that “in such great assemblies, as those must be, whereinto every man may enter at his pleasure,” everyone is given the hope that he may “incline and sway the assembly to [his] own ends.”<sup>164</sup> Because of “the desire of praise which is bred in human nature,” each citizen will indulge “the opportunity to sh[o]w

<sup>158</sup> Alan Apperley, *Hobbes on Democracy*, 19 *POLITICS* 165, 168 (1999).

<sup>159</sup> See THOMAS HOBBS, *LEVIATHAN* 86–90, 129–37 (Richard Tuck ed., Cambridge Univ. Press rev. student ed. 1996) (1651) [hereinafter *LEVIATHAN*]; Apperley, *supra* note 158, at 166–69.

<sup>160</sup> THOMAS HOBBS, *De Corpore Politico, or the Elements of Law* [hereinafter *De Corpore*], in 4 *THE ENGLISH WORKS OF THOMAS HOBBS OF MALMESBURTY* 77, 141 (William Molesworth ed., London, John Bohn 1840); *accord* Apperley, *supra* note 158, at 166–69.

<sup>161</sup> See Christiano, *supra* note 123, at § 2.1.2.

<sup>162</sup> See *LEVIATHAN*, *supra* note 158, at 131; Apperley, *supra* note 158, at 168–69.

<sup>163</sup> Apperley, *supra* note 158, at 168–69.

<sup>164</sup> *De Corpore*, *supra* note 160, at 141.

their wisdom, knowledge, and eloquence, in deliberating matters of the greatest difficulty and moment.”<sup>165</sup>

Competition and vanity are the ingredients of political resentment.<sup>166</sup> Democracy cannot fulfill the promise to promote the interests of each citizen through the political process.<sup>167</sup> For in any policy decision, only a fraction of the population—e.g., the numerical majority, with the minority discontented, or some powerful numerical minority, with the majority discontented—will see its interests promoted by democratic rule.<sup>168</sup> In other words, citizens of democracies always stand a good chance of seeing their hopes frustrated. When they feel that their hopes have been frustrated too often or too blatantly, these citizens, who are both competitive and vain, may come to feel alienated from the outcomes of legislation or marginalized by the political process.<sup>169</sup> This may breed resentment towards both.<sup>170</sup>

Hobbes’ points seem relevant to the current rise of populist figures and movements in liberal democracies. These figures or movements exploit and promote an increasingly competitive factionalism. Further, they build on real as well as perceived neglect of citizens’ interests by emphasizing the disappointments of current outcomes and processes, while courting the related popular resentment through vivid, visceral, and even uncivil expressions of disagreement.<sup>171</sup> They typically attack “systems of governance with long and opaque chains of delegation,” which they promise to overhaul.<sup>172</sup>

## VI. THE INTERLOCKING CRISES

In this Part, we highlight how the vulnerabilities of democracy are made salient as well as exacerbated by climate change and other problems of the Anthropocene. We also emphasize how climate

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<sup>165</sup> THOMAS HOBBS, *Philosophical Rudiments Concerning Law and Society: Dominion*, in 2 THE ENGLISH WORKS OF THOMAS HOBBS OF MALMESBURY 63, 136 (William Molesworth ed., London, John Bohn 1841).

<sup>166</sup> See Apperley, *supra* note 158, at 168–69. See generally Christiano, *supra* note 123, at § 2.1.2.

<sup>167</sup> See *id.*

<sup>168</sup> See Apperley, *supra* note 158, at 168 (1999).

<sup>169</sup> See *id.* at 168–69.

<sup>170</sup> See *id.*

<sup>171</sup> See generally *id.*

<sup>172</sup> Jamieson & Di Paola, *supra* note 4, at 274.

change and other problems of the Anthropocene place democracies that attempt to navigate them in a particularly impervious Scylla and Charybdis-like situation.<sup>173</sup> The Scylla is ineffective policy; the Charybdis is some relaxation of the core democratic principle of popular sovereignty. Both options seem nearly guaranteed to trigger significant legitimacy challenges to liberal democratic systems.

Traditionally, two important sources of democratic legitimacy have been beneficial consequences, in the utilitarian tradition, and consent, in the social contract tradition.<sup>174</sup> Whatever else may count as beneficial consequences, the capacity to solve problems that threaten the physical and social security of citizens is a central and important source of democratic legitimacy.<sup>175</sup> Call this the “public utility” view of democratic legitimacy. And whatever else may count as consent, surely the fact that the majority of citizens have expressed their preference for a certain candidate, law, or policy is an important source of democratic legitimacy as well.<sup>176</sup> Call this the “expressed preference” view of democratic legitimacy.

Consider public utility first. As we have pointed out, most contemporary democracies have thus far failed to address the emerging problems of the Anthropocene.<sup>177</sup> Consequently, the sense of physical and social insecurity grows more acute amongst citizens as the

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<sup>173</sup> Scylla and Charybdis were mythical sea monsters mentioned by Homer in the *Odyssey*. They were sited on opposite sides of the Strait of Messina between Sicily and the Italian mainland, and located close enough to each other that passing sailors avoiding Charybdis had to pass too close to Scylla and vice versa. HOMER, *THE ODYSSEY* 157–68 (E. V. Rieu trans., Penguin Classics 2003) (c. 800 B.C.E.).

<sup>174</sup> See Fabienne Peter, *Political Legitimacy*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., 2017), <https://plato.stanford.edu/entries/legitimacy/#SouPolLeg>. See generally Julia Driver, *The History of Utilitarianism*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., 2014), <https://plato.stanford.edu/entries/utilitarianism-history/>; Ann Cudd & Seena Eftekhari, *Contractarianism*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., 2017), <https://plato.stanford.edu/entries/contractarianism/>; Apperley, *supra* note 158, at 167.

<sup>175</sup> See generally Apperley, *supra* note 158, at 167–68; Driver, *supra* note 174.

<sup>176</sup> See generally Apperley, *supra* note 158, at 167–68; Cudd & Eftekhari, *supra* note 174.

<sup>177</sup> See generally JAMIESON, *supra* note at 5, at 34–59.

problems mount and compound.<sup>178</sup> The legitimacy of these democracies, and the supranational institutions they have created, such as the European Union and the United Nations, is thus compromised on public utility grounds.

Now consider expressed preference. The global scope, long-term reach, unprecedented features, and highly complex nature of climate change and other problems of the Anthropocene require democracies to make robust commitments to multilateral cooperation, long-term planning, significant deviations from the status quo, and increased reliance on expert knowledge if they are to succeed in managing these problems.<sup>179</sup> Citizens' expressed preferences may be quite distant from this network of commitments and activities,<sup>180</sup> since the benefits of successfully managing a problem like climate change would mostly accrue not to these citizens, but to spatiotemporally distant people (i.e., the global poor and future generations) and genetically distant (non-human) nature.<sup>181</sup> Attempting to force such commitments, especially at a time when democracies are already being accused of not being responsive enough to their citizens, can further compromise legitimacy.<sup>182</sup>

We thus face an apparent dilemma: if democracies fail to successfully address climate change and other problems of the Anthropocene, their legitimacy will be challenged on public utility grounds. If they aggressively attempt to address them, their legitimacy will likely be challenged on expressed preference grounds. Either way, we can expect the power of populist figures and movements to grow.

The remainder of this Part illuminates this dilemma by discussing how climate change and other problems of the Anthropocene

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<sup>178</sup> See, e.g., Peter Brannen, *This Is How Your World Could End*, GUARDIAN (Sept. 9, 2017, 2:00 PM), [https://www.theguardian.com/environment/2017/sep/09/this-is-how-your-world-could-end-climate-change-global-warming?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/environment/2017/sep/09/this-is-how-your-world-could-end-climate-change-global-warming?CMP=Share_iOSApp_Other).

<sup>179</sup> See JAMIESON, *supra* note at 5, at 1–10.

<sup>180</sup> See, e.g., William Samuelson & Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1 J. RISK & UNCERTAINTY 7, 8 (1988) (“[D]ecision makers exhibit a significant status quo bias.”).

<sup>181</sup> See, e.g., BONNEUIL & FRESSOZ, *supra* note 7, at 5–7; Brannen, *supra* note 178.

<sup>182</sup> See generally *Beyond Distrust: How Americans View Their Government*, *supra* note 41.

interact with some further democratic vulnerabilities: weak multilateralism, short-termism, the profusion of veto players, the contested role of experts, and self-referring decision making.

#### A. *Weak Multilateralism*

Climate change cannot be successfully managed without a strong commitment to international cooperation.<sup>183</sup> For a climate regime to succeed, it must be effective, perceived as at least not unfair by all parties, and otherwise acceptable to each party.<sup>184</sup> At various times, the attempt to create a regime has foundered on each of these three considerations.<sup>185</sup>

From the beginning of the negotiations that led to the adoption of the FCCC in 1992 and in subsequent negotiations under the Convention, the question of fairness has been unavoidable.<sup>186</sup> When agreements have been structured in ways that are acceptable to developing countries (e.g., the Kyoto Protocol) they have been perceived as unfair by the United States.<sup>187</sup> This has led to the weakening of commitments and to a regime whose effectiveness is in question.<sup>188</sup> The Paris Agreement, by putting voluntary pledges at the center, was designed to avoid the problem of perceived unfairness.<sup>189</sup> It was reasonably thought that no party could say that they had been unfairly treated when they have agreed to be measured in relation to a commitment that they have voluntarily undertaken and to which no sanctions are attached for non-compliance.<sup>190</sup> Nevertheless, that was exactly the claim made by President Trump in announcing his intention to withdraw the United States from the Paris Agreement.<sup>191</sup> Moreover, the cost of creating an agreement to which

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<sup>183</sup> See JAMIESON, *supra* note at 5, at 8–9, 193–200, 227–37.

<sup>184</sup> See *id.* at 34–59.

<sup>185</sup> See, e.g., *id.* at 18–59.

<sup>186</sup> See *id.* at 34–59. See generally HENRY SHUE, CLIMATE JUSTICE: VULNERABILITY AND PROTECTION 27–46 (2014); FRIEDRICH SOLTAU, FAIRNESS IN INTERNATIONAL CLIMATE CHANGE LAW AND POLICY 50–132 (2009).

<sup>187</sup> See JAMIESON, *supra* note at 5, at 35–38, 43–50, 57.

<sup>188</sup> See *id.* at 34–38, 43–44.

<sup>189</sup> See generally Jennifer Jacquet & Dale Jamieson, *Soft but Significant Power in the Paris Agreement*, 6 NATURE CLIMATE CHANGE 643, 645 (2016).

<sup>190</sup> See generally *id.* at 645.

<sup>191</sup> “[T]he bottom line is that the Paris Accord is very unfair, at the highest level, to the United States.” Donald Trump, President of the U.S., Statement on

no one could reasonably object was to create an Agreement whose effectiveness was in question even before the United States announced its intention to withdraw.<sup>192</sup>

While climate change is its own “full tragedy and weird comedy,”<sup>193</sup> there are structural issues at work.<sup>194</sup> As the world order attempts to adjust to shifting power distributions following the emergence of new giants such as China and India, when it comes to problems such as climate change the cooperation of such countries is no longer just desirable but essential.<sup>195</sup> As their collaboration becomes more valuable, the price for obtaining it rises accordingly.<sup>196</sup> This complicates negotiations, and the problem seems only destined to worsen because this logic applies not only to presently emerging world powers, but also to those that have already emerged and those that will emerge in the future. As we observed in an earlier paper, “[g]lobal governance in the Anthropocene is cooperation-hungry, and this increases the price of obtaining cooperation from every country.”<sup>197</sup>

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the Paris Climate Accord (June 1, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>.

<sup>192</sup> See Jamieson & Di Paola, *supra* note 4, at 274–78. For more on the Paris Agreement, see generally Jacquet & Jamieson, *supra* note 189, at 643–646.

<sup>193</sup> Jonathan Franzen, *Carbon Capture: Has Climate Change Made It Harder for People to Care About Conservation?*, *NEW YORKER* (Apr. 6, 2015), <https://www.newyorker.com/magazine/2015/04/06/carbon-capture>.

<sup>194</sup> See THOMAS HALE ET AL., *GRIDLOCK: WHY GLOBAL COOPERATION IS FAILING WHEN WE NEED IT MOST 2* (2013).

<sup>195</sup> Jacquet & Jamieson, *supra* note 189, at 645.

<sup>196</sup> See generally *id.*

<sup>197</sup> Jamieson & Di Paola, *supra* note 4, at 270. In addition, as we have suggested in a previous paper, “[e]ffective governance in the Anthropocene cannot be as state-centric as it has been in the past.” *Id.* New kinds of agents have emerged in the new epoch: global agents such as multinational corporations, the International Monetary Fund (IMF), the World Trade Organization (WTO), financial networks and rating agencies, transnational social movements, private military companies, cross-border criminal cartels, nongovernmental organizations (NGOs) and others. These new global agents are largely unaccountable for the ways in which they pursue their agendas, at least by traditional democratic forms of governance. See generally Robert O. Keohane, *Global Governance and Democratic Accountability*, in *TAMING GLOBALIZATION: FRONTIERS OF GOVERNANCE* 130, 131–59 (David Held & Mathias Koenig-Archibugi eds., 2003). Their decisions and actions, however, can have very significant impacts on the lives of people the world over, on the relations of states, and on the fate of future generations and nonhuman nature. Because they incarnate very different sets of interests and

In addition, democracies have their own particular problems when it comes to multilateral agreements. Except in the rare case where they are able to steer multilateral agreements in the way they prefer, democratic governments “often seek to avoid compliance with binding multilateral decisions if this weakens their relationship to their electorate.”<sup>198</sup> This is in fact what happened in the case of President Trump’s repudiation of the Paris Agreement.<sup>199</sup> The stated reason was the agreement’s unfairness to the United States.<sup>200</sup> However, the deeper reason was that the Obama administration’s decision to join, although admittedly an act of national self-determination, was not in fact an authentic deliverance of American popular sovereignty, at least in the eyes of Trump and his supporters.<sup>201</sup> According to Trump,

[t]he Paris Climate Accord is simply the latest example of Washington entering into an agreement that disadvantages the United States to the exclusive benefit of other countries, leaving American workers – who [sic] I love – and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories, and vastly diminished economic production.<sup>202</sup>

In the same speech Trump reminded his audience that “I was elected to represent the citizens of Pittsburgh, not Paris.”<sup>203</sup>

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pursue different goals in different ways, it is inevitable that the agendas of these agents can be mutually antagonistic. This lack of harmonization complicates the already unstable relations among states. *See generally id.* To add more fuel to the fire, as noted in Part II, governance in the Anthropocene also requires inter-generational cooperation in many domains, including climate change. *See supra* Part II.A. Inter-generational cooperation is arguably even harder to secure than its intra-generational counterpart. *See generally* Gardiner, *supra* note 29, at 481–85.

<sup>198</sup> David Held, *Climate Change, Global Governance and Democracy: Some Questions*, in *CANNED HEAT: ETHICS AND POLITICS OF GLOBAL CLIMATE CHANGE* 17, 21 (Marcello Di Paola & Gianfranco Pellegrino eds., 2014). For a different perspective, see generally Robert O. Keohane et al., *Democracy-Enhancing Multilateralism*, 63 *INT’L ORG.* 1, 1–5 (2009).

<sup>199</sup> *See* Trump, *supra* note 191.

<sup>200</sup> *Id.*

<sup>201</sup> *See id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* Ironically, after President Trump’s speech, the Mayor of Pittsburgh tweeted “Pittsburgh stands with the world [and] will follow Paris Agreement.”

In democracies, it is ultimately citizens who empower their representatives to bargain and strike terms of international cooperation.<sup>204</sup> Successfully addressing the problems of the Anthropocene is likely to require unprecedented levels of multilateralism.<sup>205</sup> Democratic states that attempt to rise to the challenge are likely to face legitimacy challenges on expressed preference grounds. Those that do not may face legitimacy challenges on public utility grounds.

### B. *Short-termism*

Short-termism can be defined as “the priority given to present net benefits at the cost of future ones.”<sup>206</sup> Short-termism is a problem whenever policy domains have an extended timeframe, as is the case with climate change and other systemic problems of the Anthropocene.<sup>207</sup> In these cases, present net benefits may need to be curtailed (through increases in taxes and regulations, for example) for the sake of benefits that might materialize in the distant future. These future benefits will then mostly advantage people other than those who have borne the costs. Reasons for privileging the present in these cases include pure time preference, uncertainty, and diminished or even null moral concern for those who might benefit in the future.<sup>208</sup> The temptation, then, is to eschew the costs of the required policies and “pass the buck” to future generations.<sup>209</sup>

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See Julia Jacobo, *Pittsburgh Mayor Vows to Honor Paris Climate Accord After Trump Invokes City in Speech*, ABC NEWS (June 1, 2017, 5:48 PM), <http://abcnews.go.com/Politics/pittsburgh-mayor-vows-honor-paris-climate-accord-trump/story?id=47777285>.

<sup>204</sup> See Ivo Wallimann-Helmer, *The Liberal Tragedy of the Commons: The Deficiency of Democracy in Changing Climate*, in *THE POLITICS OF SUSTAINABILITY: PHILOSOPHICAL PERSPECTIVES* 20, 26–27 (Dieter Birnbacher & May Thorseth eds., 2015).

<sup>205</sup> See Michael Jennings, *Climate Disruption: Are We Beyond the Worst Case Scenario?*, 4 *GLOBAL POL’Y* 32, 32, 37–38 (2013).

<sup>206</sup> See, e.g., Iñigo González-Ricoy & Axel Gosseries, *Designing Institutions for Future Generations: An Introduction*, in *INSTITUTIONS FOR FUTURE GENERATIONS* 3, 16–20 (Iñigo González-Ricoy & Axel Gosseries eds., 2017) (ebook).

<sup>207</sup> *Id.* at 4.

<sup>208</sup> See generally JAMIESON, *supra* note 5, at 105–43, 178–200.

<sup>209</sup> See STEPHEN M. GARDINER, *A PERFECT MORAL STORM: THE ETHICAL TRAGEDY OF GLOBAL CLIMATE CHANGE* 148–59 (2011).



Short-termism is not always irrational nor morally wrong.<sup>210</sup> It has been argued, however, that short-termism is both irrational and morally wrong in the case of climate change.<sup>211</sup> The sources of short-termism are rooted in human psychology and can manifest in any kind of political regime.<sup>212</sup> However, it has been argued that democracies are particularly vulnerable to short-termism.<sup>213</sup>

One important reason for the short-termism of democratic political regimes is that these regimes inherit, via voting and other forms of popular influence, their citizens' biases in favor of the present. Policies may also reflect citizens' misinformation about, or unawareness of, long-term processes, risks, policy aims, and possible outcomes.<sup>214</sup> To counter these tendencies, liberal democracies typically filter their citizens' inter-temporal biases, misinformation, and unawareness through such mechanisms as constitutions and reliance on expert bodies.<sup>215</sup> Yet the more filtering they do, the more likely they are to incur legitimacy challenges on expressed preference grounds.<sup>216</sup> This is a problem of intra-generational legitimacy.<sup>217</sup>

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<sup>210</sup> See González-Ricoy & Gosseries, *supra* note 206, at 5–6.

<sup>211</sup> See, e.g., Simon Caney, *Climate Change and the Future: Discounting for Time, Wealth, and Risk*, 40 J. SOC. PHIL. 163, 163–69, 181 (2009).

<sup>212</sup> See generally Kym Irving, *Overcoming Short-Termism: Mental Time Travel, Delayed Gratification and How Not to Discount the Future*, 19 AUSTL. ACCT. REV. 278, 278 (2009).

<sup>213</sup> See generally William D. Nordhaus, *The Political Business Cycle*, 42 REV. ECON. STUD. 169, 181–89 (1975); Finn E. Kydland & Edward C. Prescott, *Rules Rather than Discretion: The Inconsistency of Optimal Plans*, 85 J. POL. ECON. 473, 473–75, 486–87 (1977); R. Kent Weaver, *The Politics of Blame Avoidance*, 6 J. PUB. POL'Y 371, 377–80, 318–84, 393–95 (1986); Alberto Alesina & Nouriel Roubini, *Political Cycles in OECD Economies*, 59 REV. ECON. STUD. 663, 663–64, 683 (1992); Irving, *supra* note 212, at 288 (discussing short-termism as it applies in different corporate governance contexts); ALAN M. JACOBS, GOVERNING FOR THE LONG TERM: DEMOCRACY AND THE POLITICS OF INVESTMENT 3–5 (2011); Ronald R. Krebs & Aaron Rapport, *International Relations and the Psychology of Times Horizons*, 56 INT'L STUD. Q. 530, 530–35, 541 (2012); González-Ricoy & Gosseries, *supra* note 206, at 11–14 (discussing various aspects of inter-temporal problems of democratic policy-making).

<sup>214</sup> See generally CASS R. SUNSTEIN, WORST-CASE SCENARIOS 244–88 (2007) (discussing these shortcomings in relation to climate change).

<sup>215</sup> See González-Ricoy & Gosseries, *supra* note 206, at 15–18.

<sup>216</sup> See *id.* at 17–18.

<sup>217</sup> See *id.*

There are also problems of inter-generational legitimacy.<sup>218</sup> There is no guarantee that long-term policies, if enacted, will achieve the anticipated aims, or that they will indeed make future people better off by achieving these aims.<sup>219</sup> If things do not work out, these policies might be deemed illegitimate on public utility grounds by the very future people that they were supposed to benefit.<sup>220</sup> In addition, such policies may be deemed illegitimate by future people on expressed preference grounds.<sup>221</sup> Legitimacy on expressed preference grounds typically requires some form of authorization by those who are affected by policies, yet future people who will be affected by past policies never authorize them, nor can they hold anyone accountable.<sup>222</sup>

Another reason for democracies' short-termism is the scheduling of participatory events.<sup>223</sup> Democracy requires elections, which must be relatively frequent in order to ensure that people can regularly express their will, vote out politicians who are judged to have failed in some important ways, and prevent rent-seeking behavior by not giving politicians enough time to set up camp within institutions.<sup>224</sup> However, the relatively short duration of electoral cycles ensures that politicians are constantly concerned with their own reelection, and this may prevent them from taking hard policy decisions that require a great deal of political capital and do not produce appreciable outcomes in time for the next election.<sup>225</sup> Because most of the impacts of climate change will largely materialize in the future and be felt by future generations, efforts at their alleviation must obey a clock that is not in sync with the electoral clock.

Note that there is no need to assume that politicians are always and necessarily motivated by only a thirst for power.<sup>226</sup> In a democ-

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<sup>218</sup> *Id.* at 16–20.

<sup>219</sup> *Id.* at 17–19.

<sup>220</sup> *See id.* at 18–19.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 18.

<sup>223</sup> *See, e.g., id.* at 15. *See generally* Apperley, *supra* note 158, at 167–168.

<sup>224</sup> *See, e.g.,* González-Ricoy & Gosseries, *supra* note 206, at 15.

<sup>225</sup> *See* González-Ricoy & Gosseries, *supra* note 206, at 15.

<sup>226</sup> *See* Jörg Tremmel, *Parliaments and Future Generations: The Four-Power Model*, in *THE POLITICS OF SUSTAINABILITY: PHILOSOPHICAL PERSPECTIVES* 212, 212–13 (Dieter Birnbacher & May Thorseth eds., 2015).

racy, even politicians who are exclusively motivated by the aspiration to make good long-term policy need to be elected or re-elected to do so.<sup>227</sup> In order to be elected, they need to harness the votes of the current electorate.<sup>228</sup> So, the problem of short-termism goes beyond a lack of conscientious far-sightedness on the side of politicians: it is structurally connected to the very fact of popular sovereignty—at least as long as the majority of people discount the future.<sup>229</sup>

### C. *Veto Players*

Any political system (with the possible exclusion of some forms of anarchy) accords veto powers to some agent: a monarchy to the king, an aristocracy to the nobility, a technocracy to the experts, a theocracy to the religious leader, and so on.<sup>230</sup> A veto player in a political system can be understood as an agent who can prevent a departure from the status quo.<sup>231</sup> In democracies, veto players can be specified by constitutions (e.g., the President and the Congress in the United States), emerge from the political system (e.g., the Supreme Court in the United States, political parties that are members of a government coalition in Western Europe), or from civil society (e.g., powerful industries, unions or other interest groups in many countries).<sup>232</sup>

In a democracy, veto players can protect minority interests, prevent destabilizing change, and preserve important values and policies through periods in which they are unpopular.<sup>233</sup> More generally, veto players prevent a democratic system from being excessively fluid and flexible.<sup>234</sup> This is attractive when the status quo is desirable or an exogenous shock is beneficial; however, when the status quo is undesirable or an exogenous shock disturbs a desirable status quo, fluidity and flexibility are needed in order to respond quickly

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<sup>227</sup> *See id.*

<sup>228</sup> *Id.*

<sup>229</sup> *See id.* at 213–14.

<sup>230</sup> *See* GEORGE TSEBELIS, VETO PLAYERS: HOW POLITICAL INSTITUTIONS WORK 17–19 (2002).

<sup>231</sup> *Id.* at 19.

<sup>232</sup> *Id.* at 17–19.

<sup>233</sup> *See id.* at 149–53.

<sup>234</sup> *See id.* at 19, 184–86.

and decisively.<sup>235</sup> This is arguably the situation in the case of climate change, which demands nimble political responses to which veto players would have to acquiesce.

The presence of many veto players threatens to delay or even block the formulation and implementation of policy.<sup>236</sup> Liberal democracies, with their reliance on checks and balances generated by institutional architecture or by competition among interest groups, seem particularly vulnerable to such threats—and the more veto players in a democracy the greater the degree of vulnerability.<sup>237</sup>

An especially high concentration of veto players helps to explain why a powerful, rich, technological leader like the United States is uncannily slow to address consequential public issues such as the politics of distribution, racial equality, immigration, the proper balance between liberty and national security, and of course climate change.<sup>238</sup> The United States Constitution separates powers in the federal government, reserves a broad range of powers to states and includes a bill of rights that can be viewed as effectively giving veto powers to individuals in some circumstances. Practices have also developed through time that inhibit action, such as requiring super-majorities for some political decisions.

The profusion of veto players may be extreme in the United States, but it is a feature common to many liberal democracies that often makes political action elusive even on relatively minor policy issues.<sup>239</sup> For every possible policy change, there is always a “do-nothing” alternative (sometimes more respectably presented as a “wait and see” alternative) that is invariably attractive to some veto player.<sup>240</sup>

“Do-nothing” alternatives may sometimes be justified on grounds of rational choice considerations relating to transition costs and uncertainty about both the process of transition and the final pay-off structure.<sup>241</sup> Veto players give voice to such considerations, as well as other considerations that we have already noted.<sup>242</sup> But

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<sup>235</sup> *See id.* at 185–86.

<sup>236</sup> *See id.* at 19, 184–86.

<sup>237</sup> *See id.* at 185–86, 189–90.

<sup>238</sup> *See, e.g., id.* at 184, 189–90.

<sup>239</sup> *See id.* at 184, 189–90.

<sup>240</sup> *See id.* at 185–90, 215–18.

<sup>241</sup> *See id.* at 215–18.

<sup>242</sup> *See id.*

veto players may also give voice to less rational tendencies, which are inevitably present and, in democracies, are crystallized in votes. Among these tendencies may be disproportionate attention to sunk costs, finding refuge in “what has always worked,” fear of regretting the changes made, the desire to maintain and transmit a sense of control by not acceding to the demands of new circumstances, and lack of trust in those who are proposing the changes.<sup>243</sup>

Veto players tend to slow down or block deviations from the status quo, and this makes it difficult to tackle climate change and other similar problems of the Anthropocene.<sup>244</sup> But veto players also reflect and configure real structures of power, and protect and promote the needs and interests of actual people.<sup>245</sup> When the number of veto players or the importance of specific veto players is altered, new power structures emerge and this can raise legitimacy challenges on both utility and expressed preference grounds.<sup>246</sup> It is not obvious what veto players should be eliminated or demoted in order to produce more nimble and effective climate policy, and which ones should be given additional power instead. Nor is it obvious who should decide the answers to these questions (if not the people) and on what grounds (if not majority rule).

Veto players configure systems of checks and balances, filters and buffers, which are only partially exposed to popular influence.<sup>247</sup> This anti-majoritarian service is particularly precious to liberal democracies, which rely on veto players to protect and promote the rights of individuals and minorities—and, with that, the core liberal principles of individual liberty and human rights. However, as a consequence, if a majority exists that is overwhelmingly convinced by climate science, totally in favor of leaving all remaining fossil energy sources in the ground, and ready to embark on ambitious renewable energy programs, this majority may still find it difficult to act. Liberal democracies protect minorities of various kinds in varying degrees, and these include climate change denialists and those who profit from fossil fuels. Economically powerful and en-

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<sup>243</sup> See generally Samuelson & Zeckhauser, *supra* note 180, at 7–11, 37–41.

<sup>244</sup> TSEBELIS, *supra* note 230, at 19, 184–86.

<sup>245</sup> See *id.* at 161.

<sup>246</sup> See González-Ricoy & Gosseries, *supra* note 206, at 17.

<sup>247</sup> See TSEBELIS, *supra* note 230, at 185–86.

trenched economic minorities (the “1%”) are often extremely effective veto players.<sup>248</sup> This can prevent action that would benefit most people, thus increasing the risks of legitimacy challenges.

#### D. *Contested Role of Experts*

Climate change and other problems of the Anthropocene are unprecedented phenomena whose complexity and implications are only beginning to be understood by scientists and other experts. Climate change is a multidimensional problem that concerns and connects ecology, demography, development, production, consumption, resource use, trade rules, health, security, urban planning, mobility, migration, and more, in novel ways.<sup>249</sup> It poses threats that are multi-scalar, probabilistic, indirect, often invisible, spatiotemporally unbound, and potentially catastrophic. These threats challenge our reason, emotions, and imagination.<sup>250</sup> If there were ever a complex problem that required expert knowledge, it is climate change.

Liberal democracies make significant use of expert knowledge in policymaking in various ways to protect liberal values, and to boost their efficiency, equity, and political stability.<sup>251</sup> Expert knowledge is distinguished from non-expert opinion through such criteria as experience, professional and educational qualifications, peer-review, and rules of evidence.<sup>252</sup>

Still, in a democracy, differences in expertise do not translate to differences in political authority, for much the same reason why differences in lineage do not translate in this way. A democratic citizen can recognize expertise and accept the science of, say, climate

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<sup>248</sup> See generally NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO CLIMATE CHANGE* 213 (2010).

<sup>249</sup> See *The Nature of the Problem*, *supra* note 30, at 42–50.

<sup>250</sup> On our cognitive, affective and imaginative limits when it comes to climate change, see generally SUNSTEIN, *supra* note 214, at 244–88; JAMIESON, *supra* note 5, at 8, 178–200.

<sup>251</sup> See generally CHRISTINA BOSWELL, *THE POLITICAL USES OF EXPERT KNOWLEDGE* 5 (2009).

<sup>252</sup> Marissa F. McBride & Mark A. Burgman, *What Is Expert Knowledge, How Is Such Knowledge Gathered, and How Do We Use It to Address Questions in Landscape Ecology*, in *EXPERT KNOWLEDGE AND ITS APPLICATION IN LANDSCAPE ECOLOGY* 11, 13 (Ajith H. Perera et al. eds., 2012). See generally MICHAEL OPPENHEIMER ET AL., *DISCERNING EXPERTS: THE PRACTICES OF SCIENTIFIC ASSESSMENT* (forthcoming 2019).

change, and still object to the expert who counsels some course of action: “You may be right, but who made you boss?”<sup>253</sup> In a democracy, expertise is always subservient to the voice of the people (*pace* Plato, philosophers cannot be kings).<sup>254</sup>

For this reason, the relationships between experts and ordinary citizens are always potentially fraught in a democracy. These relationships vary from country to country, time to time, and issue to issue. Often, the relationships are placid in good times and rocky in hard times. Major policy failures, such as the global financial crisis of 2008 and the spreading of terrorist radicalization in many European Union countries, can lead citizens to question experts’ knowledge and see them as just another interest group seeking rents at people’s expense.<sup>255</sup>

In the case of climate change, an additional element makes the role of experts potentially unpopular. Climate science, in our present social context, inevitably provokes fundamental questions about how we ought to live and organize our societies, throwing doubt on the ways in which we do so now. A particularly powerful and widespread attempt to avoid cognitive dissonance through various forms of rationalization may thus come into play. After all, if something potentially catastrophic such as climate change can result from the very ways in which we live our everyday lives—how we dwell, how we eat, how we make things, how we move around—the nagging thought is that there might be something fundamentally wrong about the ways in which we live. These are not comfortable thoughts and can lead to resentment or worse towards those who bear the message.

The incipient conflict and simmering resentment has been exploited by powerful interests who look to be the immediate losers from a transition to a more sustainable way of life. They stoke the dissonance and encourage denialism. The most obvious manifestation of this is the climate change denial campaign, directed towards

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<sup>253</sup> See generally DAVID M. ESTLUND, *DEMOCRATIC AUTHORITY: A PHILOSOPHICAL FRAMEWORK* 206–22 (2008).

<sup>254</sup> See generally *The Philosopher King*, *supra* note 131, at 175, 175–263.

<sup>255</sup> See generally Arnold Kling, *The Era of Expert Failure*, CATO POLICY REPORT, Sept.–Oct. 2010, at 1, 1, 6, 8; TOM NICHOLS, *THE DEATH OF EXPERTISE: THE CAMPAIGN AGAINST KNOWLEDGE AND WHY IT MATTERS* 170–75, 179–88 (2017).

preventing the formation of a consensus for political action on climate change.<sup>256</sup>

The main strategy of climate change denialists has been to suppress both belief in the science and belief that there is a scientific consensus on the existence, anthropogenic nature, and dangerousness of climate change.<sup>257</sup> In its aims and strategies, climate change denialism has replicated earlier forms of denialism involving tobacco smoking, acid rain, DDT, and ozone depletion.<sup>258</sup>

The rhetorical techniques adopted by climate change denialism have also not been particularly original: versions of these techniques were used in all the other cases mentioned above. These techniques include attacking sources rather than discussing evidence, “moving the goalpost” by requesting ever larger amounts of evidence, submitting false evidence, suggesting false equivalences or analogies, confusing ignorance about mechanisms or processes with ignorance about facts or outcomes, cherry-picking anomalies, selective skepticism, quote mining, and the so-called “Gish gallop”—overwhelming discussants or audiences with unscientific claims to make it difficult to counter all the misinformation at once.<sup>259</sup>

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<sup>256</sup> See generally ROSS GELBSPAN, *BOILING POINT: HOW POLITICIANS, BIG OIL AND COAL, JOURNALISTS, AND ACTIVISTS ARE FUELING THE CLIMATE CRISIS—AND WHAT WE CAN DO TO AVERT DISASTER* xi, 37–41 (2004); ROSS GELBSPAN, *THE HEAT IS ON: THE CLIMATE CRISIS, THE COVER-UP, THE PRESCRIPTION* 1–14 (Updated ed. 1998); ORESKES & CONWAY, *supra* note 248, at 169–215. It is important to see that expertise denialism is not the fallibilist skepticism that is healthy for democracy in the ways celebrated by John Dewey, Hannah Arendt, and Karl Popper. See generally HANNAH ARENDT, *THE HUMAN CONDITION* 1–6 (2d ed. 1998); 1 K. R. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES: THE SPELL OF PLATO* 185–194 (4th ed., 1963); John Dewey, *Thought and its Subject-Matter*, in 11 *THE DECENNIAL PUBLICATIONS: STUDIES IN LOGICAL THEORY* 1, 1–23 (Edward Capps et al. eds., 1903). In many cases, rather than being skeptical about some widely believed and well-supported claim, a denialist asserts its contrary and tries to explain away the evidence for the claim on the basis of conspiracy, deceit, or some rhetorical appeal to “junk science.” See generally Charles N. Herrick & Dale Jamieson, *Junk Science and Environmental Policy: Obscuring Public Debate with Misleading Discourse*, 21 *PHIL. & PUB. POL’Y Q.*, no. 2/3, 2001, at 11, 12–13, 15–16. In other words, a denialist can be a dogmatist.

<sup>257</sup> See JAMIESON, *supra* note 5, at 3–4, 61–104.

<sup>258</sup> See generally ORESKES & CONWAY, *supra* note 248, at 168.

<sup>259</sup> *Science Denialist Tactics*, DEBUNKING DENIALISM, <https://debunkingdenialism.com/critical-thinking/science-denialist-tactics/> (last visited Dec. 19, 2017).



What is new about denialism in the Anthropocene is not its strategies or tactics, but its amplification. Expertise denialism now travels through social media, which allows for unfiltered instant communication among citizens and between citizens and representatives. Traditional intermediaries—political parties, intellectuals, and the professional press—are increasingly made redundant by these technologies. Indeed, to maintain their relevance (and market share), these traditional intermediaries often seek to replicate the immediacy and excitement of social media, compromising their own claims to epistemological or institutional privilege.

One effect of the speed and directness with which political communication occurs through social media is an increased tendency to brand political ideas and policy proposals and to market them as products.<sup>260</sup> The need to engage audiences with arguments and relevant facts—and even to maintain consistency in one’s opinions—decreases, while the need for a good, resonant, quick-win pitch increases. With that, the importance of expert knowledge is downplayed to the advantage of skilled branding and marketing.

Another effect of the speed and directness with which political communication occurs through social media is a polarizing fragmentation, not just at the level of policy judgments, but also regarding the sets of facts to which different individuals and groups make reference. Social media allows for networked, yet highly fragmented, political communication, making it harder to individuate and even debate a common story.<sup>261</sup>

Much empirical work in psychology, economics, political science, sociology, and communications has gone into trying to explain how and why disagreement about facts can occur.<sup>262</sup> The explanation seems to be some sort of “biased assimilation,” whereby people

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*See generally* DAVE LEVITAN, NOT A SCIENTIST: HOW POLITICIANS MISTAKE, MISREPRESENT, AND UTTERLY MANGLE SCIENCE 28–43, 96–110, 186–200 (2017).

<sup>260</sup> *See* JAMIESON, *supra* note 5, at 87–91.

<sup>261</sup> *See generally* W. Lance Bennett, *Personalization of Politics: Political Identity, Social Media, and Changing Patterns of Participation*, ANNALS, Nov. 2012, at 20, 20–23, 28–29, 37–38. On the importance of a common story for democracies in the Anthropocene, see JEDEDIAH PURDY, AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE 256–288 (2015).

<sup>262</sup> *See generally* Dan M. Kahan & Donald Braman, *Cultural Cognition and Public Policy*, 24 YALE L. & POL’Y REV. 147, 147–55 (2006); JONATHAN HAIDT,

adjust their view of facts with reference to their self-defining values, social identities, and partisan allegiances.<sup>263</sup> Experiments on reception suggest that individuals selectively credit or dismiss information in a manner that reinforces beliefs congenial to their values.<sup>264</sup> These experiments found that subjects were substantially more likely to count a scientist as an authoritative “expert” when the scientist was depicted as taking a position consistent with the subjects’ cultural predispositions, than when that scientist took a contrary position.<sup>265</sup> Interestingly, these tendencies seem to be directly, rather than inversely, related to levels of science literacy and general education of experimental subjects: the more equipped people are to know and understand the facts, the more they disagree on them.<sup>266</sup>

In times of social media, these tendencies may be amplified, insofar as individuals tend to gravitate towards and engage mostly with resonant networks of “like-me’s” that by and large reaffirm their own values and perspectives.<sup>267</sup> This may tribalize positions and impede constructive democratic engagement and debate from ever taking off on many contested issues. In addition, one can expect increasing polarization to also be fomented by individuals and groups trying to secure loyalty to their branded political ideas and policy proposals in this way.

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THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION xvi–xvii (2012).

<sup>263</sup> See generally CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT* 4, 213–66 (2016).

<sup>264</sup> See Dan M. Kahan et al., Letter, *Cultural Cognition of the Risks and Benefits of Nanotechnology*, 4 *NATURE NANOTECHNOLOGY* 87, 87, 89 (2009).

<sup>265</sup> See Dan M. Kahan et al., *Cultural Cognition of Scientific Consensus*, 14 *J. RISK RES.* 147, 166–69 (2011).

<sup>266</sup> See Dan M. Kahan et al., Letter, *The Polarizing Impact of Science Literacy and Numeracy on Perceived Climate Change Risks*, 2 *NATURE CLIMATE CHANGE* 732, 732, 734 (2012). We should be cautious, however, about this conclusion since scientific literacy is defined in quite a general way in this study, while expertise about a particular area of science (such as climate science) can require quite specific knowledge and skills that may not be available to many people who are generally science-literate.

<sup>267</sup> See Lawrence Lessig, *How the Net Destroyed Democracy*, TEDXBerlin (Aug. 10, 2017), <http://www.tedxberlin.de/how-the-net-destroyed-democracy-lawrence-lessig>.

The internet and other media, with their seemingly endless resources, create the impression that expertise can be picked and chosen at will, thereby feeding the perception of public life as a spectacle.<sup>268</sup> Public discussions, unfiltered by “moderators,” unfold in a denuded space stripped of epistemological norms.<sup>269</sup> In the United States at least, this has morphed into a generalized atmosphere of expertise denialism writ large. Denialism about evolution, vaccines, economics, and more has become commonplace.<sup>270</sup>

It is not an exaggeration to say that we are on the verge of adopting epistemological nihilism as a public epistemology.<sup>271</sup> No commitment to facts, in the traditional sense, or even consistency of opinion, is required.<sup>272</sup> Truth is what the speaker says it is, here and now. In a moment it may be different, depending on what the speaker can get away with. In a democracy, it is up to elections or approval ratings to resolve disagreements. It is a short step from here to other exercises of power.

The nihilistic turn in public epistemology threatens the legitimacy of democracy, for democracy cannot solve the problems it faces without mobilizing epistemological authority that is itself hostage to popular vote. As difficult as this challenge may be in favorable times, it is greatly magnified in the face of climate change and other problems of the Anthropocene.

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<sup>268</sup> See NICHOLS, *supra* note 255, at 105–33; see also NEIL POSTMAN, *AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS* 3–15 (3rd prtg. 1986).

<sup>269</sup> See generally POSTMAN, *supra* note 268, at 16–29.

<sup>270</sup> See Stephanie Pappas, *Evolution, Climate and Vaccines: Why Americans Deny Science*, *LIVE SCIENCE: CULTURE* (Jan. 21, 2017, 5:30 PM), <https://www.livescience.com/57590-why-americans-deny-science.html>. Denialism may be more prevalent in democracies because democratic citizens may have a higher degree of “cognitive mobilization” than citizens of other societies, as suggested by MUDDE & KALTWASSER, *supra* note 56, at 103–04.

<sup>271</sup> For discussion of the precursors of epistemological nihilism in the United States, see generally KURT ANDERSEN, *FANTASYLAND: HOW AMERICA WENT HAYWIRE* 3–14 (2017).

<sup>272</sup> See Dale Jamieson, *Climate Justice in the Age of Trump*, *YOUTUBE* (Aug. 24, 2017), <https://www.youtube.com/watch?v=hKv3Jglt5Iw>.

### E. *Self-referring Decision-making*

What we have elsewhere called the “agency presupposition” is deeply entrenched in modern democratic theory. This presupposition holds “that the political community is constituted by agents who initiate and conduct political action, and who themselves, and their interests and welfare, are what matter politically.”<sup>273</sup> The agency presupposition arose at a time in which democratic principles, norms and institutions were being developed to govern relations between agents who lived in close proximity to one another in space and time, and whose decisions and actions had relatively direct impacts on each other. However, around 1950, a profound change occurred from a world of discrete but interdependent states to a world of shared social space in which distant events have localized impacts and vice-versa. In this globalized world, the fates of nation-states and their peoples became not just effectively interdependent, but also structurally interconnected, with social, political, and economic activities, interactions, and infrastructures stretching beyond political frontiers, leading to a deepening enmeshment of the local and the global.<sup>274</sup> Political decisions and actions taken locally (in selected powerful countries, many of which were democratic) now systematically had planetary implications, impacting for better or worse the welfare and interests of people in all corners of the world.

With the Anthropocene disruption of earth’s fundamental ecological systems, including those that govern climate, political agents (living humans who can initiate and conduct political action) have gained unprecedented power over a vast universe of non-agents that comprises animate and inanimate nature as well as those living on

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<sup>273</sup> Jamieson & Di Paola, *supra* note 4, at 259. At various times and places, women, slaves, children, and others were excluded from the political community because they were not seen as full agents. *Id.* “At different times and places democratic communities have become uneasy about many of these exclusions. This contributed to the abolition of slavery and the expansion of the franchise to include non-property-owning males, women and others.” *Id.* These reforms typically tracked with the attribution of agency to these formerly subordinated groups. *See id.* Recently, Donaldson and Kymlicka have advocated citizenship for domesticated animals. SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS: A POLITICAL THEORY OF ANIMAL RIGHTS* 50–69 (2011).

<sup>274</sup> *See* DAVID HELD & ANTHONY MCGREW, *GLOBALIZATION/ANTI-GLOBALIZATION: BEYOND THE GREAT DIVIDE* 2–4 (2d ed. 2007).

the periphery of both space and time.<sup>275</sup> The circle of affected non-agents has expanded beyond cultural, genetic, and spatiotemporal boundaries to include virtually everything on the planet, now extended indefinitely in time.<sup>276</sup> This establishes an enormous asymmetry of power. Those on the periphery, and nature, cannot initiate and conduct political action: they cannot reciprocate, they cannot participate, they cannot protest, they cannot retaliate.<sup>277</sup> In democratic terms, they do not matter—or only matter derivatively, if political agents care about their fate. And it is as undemocratic as can be, particularly if the democracy in question is a liberal democracy, to force political agents to care if they do not.<sup>278</sup>

A phenomenon like climate change creates ubiquitous tensions and trade-offs between agents and non-agents—those who are governed, and those who are affected.<sup>279</sup> The latter will suffer most from climate change, but a democracy responsive to the claims of future generations (or those living beyond its borders, or nonhuman nature) may often have to forgo opportunities for bringing beneficial consequences to those who empower it with their votes.<sup>280</sup> Instead, democratic leaders would have to enact policies favoring the interests of those who do not vote because they do not yet exist (or live in different countries or are not human).

Democracies making policies that favor non-agents will expose themselves to intra-generational legitimacy challenges on both public utility grounds and expressed preference grounds.<sup>281</sup> Even if the expected benefits to non-agents were great, such non-agent-oriented policies might not win the hearts, minds, and guts of living human agents who may express their preference for themselves instead—

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<sup>275</sup> See generally JAMIESON, *supra* note 5, at 100–36.

<sup>276</sup> See generally *id.*; BONNEUIL & FRESSOZ, *supra* note 7, at 5–7; Brannen, *supra* note 178.

<sup>277</sup> See generally González-Ricoy & Gosseries, *supra* note 206, at 18–21.

<sup>278</sup> See *The Nature of the Problem*, *supra* note 30, at 42–43. For divergent positions about how these considerations are reflected in economic analysis compare Nicholas Stern, *The Economics of Climate Change*, 98 AM. ECON. REV., no. 2, May 2008, at 1, 23–33, with WILLIAM NORDHAUS, A QUESTION OF BALANCE: WEIGHING THE OPTIONS ON GLOBAL WARMING POLICIES 192–204 (2008).

<sup>279</sup> See generally JAMIESON, *supra* note 5, at 100–36.

<sup>280</sup> See generally *id.*

<sup>281</sup> They may also expose themselves to inter-generational legitimacy challenges. See *supra* Part VI.B.

particularly in democracies that are already being accused of not being responsive enough to their citizens.<sup>282</sup> Many believe that ignoring or heavily discounting the welfare and interests of non-agents is morally wrong, but if expressed preference is important, it may be a wrong that democracies cannot avoid committing.<sup>283</sup>

The agency presupposition makes government responsive to those who are governed but not to those who are affected beyond borders in space, time, citizenship, or genetic make-up. A basic presupposition of liberal democracy appears to be threatened by the very actions that would have to be taken to express concern for all those affected by the climate-changing and eco-altering actions of its citizens.

## VII. CONCLUSION

We began this Article by explaining the notion of the Anthropocene and briefly telling the story of failed responses to climate change. We went on to discuss the uneasy relationship between climate change and democracy, focusing on liberal democracy in particular. We presented some basic aspects of democratic theory and practice, and discussed some of democracy's main vulnerabilities. We showed how in the Anthropocene these vulnerabilities can magnify, leading to legitimacy challenges.

These legitimacy challenges are not new. Democracy has always been haunted by anxiety about its future. Some political theorists have argued that democracy is the only form of political organization that underwrites the seeds of its own destruction.<sup>284</sup> Demagogues and extremists who wish to blow up the state are allowed the same freedoms as those who seek to manage it more fairly and effectively. The risk of a democratically enabled democide is not an abstract or counterfactual risk: the executioners of German democracy came to power through the rules and procedures of the Weimar

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<sup>282</sup> See generally González-Ricoy & Gosseries, *supra* note 206, at 20.

<sup>283</sup> See JAMIESON, *supra* note 5, 115–30 (discussing discounting); Caney, *supra* note 211, at 163–69, 181; *supra* Part VI.B.

<sup>284</sup> See generally MARK CHOU, DEMOCRACY AGAINST ITSELF: SUSTAINING AN UNSUSTAINABLE IDEA vii–viii, 1–20 (2014).

Republic.<sup>285</sup> If we open our eyes, we may see these stories going on around us today.

Modern democracy is, in many respects, the most sophisticated articulation of the human capacity for social organization. It is also the most hospitable environment for the expression of human values that, through centuries of emancipatory struggles, have come to be regarded as fundamental, such as individual liberty and political equality.<sup>286</sup> Our objective in this Article is not to write a requiem for democracy, but rather to chart the seas that democratic theory and practice will have to navigate in order to successfully address climate change and survive the challenges of the Anthropocene. We have highlighted the vulnerabilities of democracy in order to throw in sharp relief the many challenges entailed by the voyage, not to discourage it. Democracy has shown itself to be remarkably resilient in the past, and it may well succeed in rising to these challenges as well. There are those who think that democracy doesn't stand a chance.<sup>287</sup> But many still believe that the only solution to the problems of the Anthropocene lies in more, better, or different democracy.<sup>288</sup> And there are those who think that even if democracy fails these challenges, democracy itself will not have failed. For they see its value as intrinsic, and not just as a means to better or more effective governance.<sup>289</sup>

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<sup>285</sup> See generally Patrick J. Geary et al., *Germany: The Weimar Constitution*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Germany/The-Weimar-constitution#ref297631> (last updated Dec. 6, 2017).

<sup>286</sup> See Wallace, *supra* note 75, at 105.

<sup>287</sup> See generally DAVID SHEARMAN & JOSEPH WAYNE SMITH, *THE CLIMATE CHANGE CHALLENGE AND THE FAILURE OF DEMOCRACY* 1–18, 89–106 (P.H. Liotta ed., 2007). For an interesting perspective, see DAVID RUNCIMAN, *THE CONFIDENCE TRAP: A HISTORY OF DEMOCRACY IN CRISIS FROM WORLD WAR I TO THE PRESENT* 1–34, 327–36 (2015).

<sup>288</sup> See generally Nico Stehr, *Exceptional Circumstances: Does Climate Change Trump Democracy?*, 32 *ISSUES SCI. & TECH.*, no. 2, 2016, at 37, 37–39; JAMES GUSTAVE SPETH, *AMERICA THE POSSIBLE: MANIFESTO FOR A NEW ECONOMY* x, 157–86 (2012). See also John Dryzek, *Deliberative Democracy and Climate Change*, *CTR. FOR HUMANS & NATURE*, <https://www.humansand-nature.org/democracy-john-dryzek> (last visited Dec. 18, 2017); FRANK FISCHER, *CLIMATE CRISIS AND THE DEMOCRATIC PROSPECT: PARTICIPATORY GOVERNANCE IN SUSTAINABLE COMMUNITIES* 1–2, 251–75 (2017).

<sup>289</sup> See THOMAS CHRISTIANO, *THE CONSTITUTION OF EQUALITY: DEMOCRATIC AUTHORITY AND ITS LIMITS* 72–73 (2008); Elizabeth Anderson, *Democracy: Instrumental vs. Non-Instrumental Value*, in *CONTEMPORARY DEBATES*

It is difficult to sketch the nature of possible democratic solutions to some of the issues that we have raised, and we will not try to do so here. Instead, we will close with a summary of what seems to be the main challenge ahead. The existing democratic deficits in liberal countries will generally have to be reduced. Yet, in the case of climate change and other problems of the Anthropocene, liberal democratic countries will have to muster both the internal coherence and strength to better resist populism, and the external coherence and strength to be more cooperative partners within the framework of supranational institutions. This is necessary because, in the Anthropocene, the global spills into the domestic and vice-versa: a globally changing climate may have pernicious local impacts on the territory and population of any given country, while political dysfunction in one country can cripple efforts at global governance.

The democracies of the Anthropocene will have to work at multiple scales in both space and time, incorporating the interests of the global with those of the local, and those of the future with those of the present. This seems to suggest, perhaps paradoxically, that the democracies of the Anthropocene will have to be more democratic in some respects and less democratic in others. The relation between popular sovereignty and institutions that limit popular sovereignty while respecting it is a tug-of-war in democratic theory and practice that has been going on for millennia, and is now being put to unprecedented tests.

Liberal democracies, in particular, have an enormous amount at stake. Liberal political theory has always recognized the right to resist and even overthrow illegitimate political power.<sup>290</sup> This right has been used to justify historical events that liberals typically applaud, including the Glorious Revolution, the French Revolution, and the American Revolution.<sup>291</sup> Despite their failures and excesses,

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IN POLITICAL PHILOSOPHY 213, 213–14 (Thomas Christiano & John Christman eds., 2009).

<sup>290</sup> See generally JOHN LOCKE, TWO TREATISES OF GOVERNMENT 237–239 (Lee Ward ed., Hackett Publ'g Co. 2016) (1690).

<sup>291</sup> See generally *Glorious Revolution*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Glorious-Revolution> (last updated June 27, 2017); *French Revolution*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/French-Revolution> (last updated Dec. 15, 2017); *American Revolution*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/American-Revolution> (last updated Sep. 20, 2017).



these revolutions forwarded liberal values and helped to entrench them in institutions. Unable to find consistent responses to challenges to their own legitimacy in the Anthropocene, liberal democracies may be in danger of warranting revolutions against themselves and the very institutions that should realize their values. They may become the *ancient regime*.