Tempering Political Inferiority: How Does Representation Matter?

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Niko Kolodny's *The Pecking Order* includes a 'book-length treatment' of the idea of an 'equal say' (6) that is ubiquitous in commonplace talk and philosophical reflection about democracy.[1] In this commentary I concentrate on the account of political representation that forms a main part of the 'treatment'. That account places democratic representative institutions within a larger framework animated by the thought – a 'positive conjecture' – that we have non-derivative claims against being placed in 'untempered relations of inferiority' (126) with individuals who wield the power and authority of the state. The principal challenge is to identify conditions under which we might regard these relations as sufficiently tempered to be unobjectionable. Kolodny's book offers a doctrine of 'primary' and 'secondary tempering factors' whose satisfaction is claimed to render hierarchical social relations like those that constitute political representation acceptable, or as much so as we might reasonably expect.

Before I read *The Pecking Order*, it did not occur to me to worry that my representative has more power and authority than I do. I thought that this is part of the bargain: representative government is a division of labor, and if I wanted its benefits, I should accept its costs, subject to some substantive conditions of political morality. It did not seem to me that the costs to be registered include whatever 'cost' I might incur from being in an inferior position to my representative. I'd signed on, so to speak, to a system in which

[1] Numbers in brackets refer to page numbers in Kolodny (2023).

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we have representatives who stand 'above us', and the question is how the system should be organized to make it justifiable to those I expect to comply with it. That the system should treat citizens in morally significant ways as equal members of the political community is one condition. Another is that it should be effective in solving problems widely regarded as needing solution. I am sure there are others. Early in the book, Kolodny observes that one of its upshots is a 'democratic pessimism' (6): analysis of claims against inferiority in democratic institutions seems to leave some pressing questions underdetermined. I wonder, however, if we might be less pessimistic, at least in this respect, if we were to take account of political values in addition to avoidance of inferiority that seem to be central to democracy's justification. I wonder, also, whether we might be inclined to think that concerns about hierarchy in democratic institutions may be less significant in our judgments about the legitimacy of those institutions than the perspective of tempered hierarchy suggests. For reasons I come to at the end, these worries need not be objections.

My doubts arise from thinking about various features of political representation that seem to distinguish it from direct democracy – for example, the procedures of legislatures, the division between legislation and administration, and the role of political parties. These features are obscured when representation is regarded from the abstract perspective of inferiority. The situation might be like what Hart found when thinking about Rawls's remarks on the priority of liberty: an attractive idea regarded abstractly can become puzzling when we consider its application to institutional practice (Hart 1973: 534, attributing a similar thought to Sidgwick).

1. The claim against the state and representation

A striking feature of Kolodny's book-within-a-book is its skepticism about the significance of conventional notions of political representation. In a footnote, he writes that attention to 'the language of "representation"' found in the political-theoretical literature, from Pitkin (1967) to Manin (1997) and beyond, 'encourages investigations that distract from or obscure what seem to me the central moral-philosophical questions' (434–435, n. 2).[2] He is happy to use

[2] Though he notes that we can learn much from these studies for other purposes.

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the language of representation 'for the time being and for lack of something better' (292). However, he suggests that we would not lose much of philosophical importance if we were to consider political representatives as a species of the genus 'highest official': 'the central moral-philosophical questions' arise for all members of the genus (335–336).

This scepticism may be explained by the fact, as Kolodny observes, that a problem of inferiority also arises in most cases of assembly or 'direct' democracy, in which some individuals carry out the decisions of the assembly, organise and keep track of its procedures, and perhaps frame its agenda (330; 419, Ch. 8, n. 2). That a democracy is 'direct' means that all citizens can participate in making the laws, but it does not imply that there is no government or administration. The government has a structurally similar hierarchical relationship to the individuals who compose the assembly as 'highest officials' have to ordinary citizens in representative democracy. In either case, citizens might have a complaint, according to the 'positive conjecture', about being placed in a relationship of inferiority, so it might seem that representative democracy does not pose a distinct problem of justification not posed in any democratic system.

The general theory of social hierarchy offered in response to claims against inferiority holds that these claims can be met when various 'primary tempering factors' are in place. They include, for example, 'Episodic Character' (that an asymmetry or disparity only arises in one-off encounters rather than being embedded in ongoing social relations) and 'Context Limitation' (that an asymmetry or disparity is limited to particular contexts [98–99]). Importantly for the case of democracy, they also include the more complex factor of 'Downward Equalization' (roughly, that the asymmetry or disparity is regulated by higher-order decisions 'not themselves marked by the same asymmetry or disparity' [100–101]). When sufficiently present, these factors eliminate or attenuate the objection to the asymmetry or disparity (98).[3]

The problem, in the political case, is that the state is unique in exercising overwhelming power and authority over those it governs. The uniqueness of this hierarchical relationship, in the context of concern about inferiority, is that ('unless more is said' [124]) it is not tempered by the primary tempering factors. The state's power

[3] Zuehl (2024) observes that the list of tempering factors can seem *ad hoc*, though may be capable of a more unified presentation. I set the suggestion aside for now, but it plainly bears further consideration.

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and authority are neither episodic nor limited to a few particular contexts. This is problematic because, 'when the robes and badges are stripped away', the state is just 'other people' (124) – that is, natural persons – who occupy the offices constituting the state and can exercise power and authority over individuals who are, relative to the officials, in positions of inferiority. The problem is to explain how the complaint can be answered, given that the primary tempering factors may not be much help.

Kolodny's solution is to introduce a set of 'secondary tempering factors'. They would 'make our subjection to the superior power and authority of the state less our subjection to the superior power and authority of other [natural] individuals and so less relations of inferiority to them' (125). He identifies six 'vertical' and two 'horizontal' secondary factors. The three most consequential are 'Impersonal Justification' (that an office with asymmetrical power or authority is justified by impersonal reasons), 'Least Discretion' (that officials holding such an office are given no more discretion than is required by the office's impersonal justification), and 'Equal Influence' (that those subject to such an office 'have equal opportunity to influence it') (125–127, 131–138, 140–144).

2. Representation as hierarchy

Kolodny models representative ('indirect') democracy as an instantiation of a more general phenomenon he calls 'Supersession' that might also occur in cases of direct democracy. Simplifying, Supersession is a phenomenon in which some people – ordinary citizens – are subordinated to others – public officials – who have greater power and authority. Public officials, in turn, are controlled by the collective People, consisting of the citizens. In this phenomenon, 'one is … subordinated to those who control one's subordinators' (331). Procedures that enable the People to select officials can make it the case that each individual member of the body of ordinary citizens has an equal and positive opportunity to influence the selection ('Equal Influence'). Supersession together with Equal Influence temper each individual citizen's relation of inferiority to the natural persons who occupy higher offices, instantiating the primary tempering factor of Downward Equalization.

As it applies to indirect (or representative) democracy, what can make the relationship of inferiority between representatives and ordinary citizens unobjectionable, or at least less so, is the equal opportunity of each ordinary citizen to influence the People's

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selection of representatives, making it the case that nobody has more influence over the actual exercise of political power and authority than anyone else. The secondary tempering factors generate conditions for the selection and conduct of higher officials, including members of the legislature. The 'selection conditions' include a preference for election over sortition, an important claim I leave aside. The 'conduct conditions' require 'highest officials (taking these to include members of the highest official bodies)' to follow procedures 'that best serve impersonal reasons, such as the public interest' and to 'behave so as to make it possible for elections to be the giving of directives' (340). The latter condition requires that 'voters must be in a position to predict what candidates and parties would seek to do in office if elected'. This might require the organization of programmatic political parties with incentives to publicize their programs in advance of elections and to provide information that would enable citizens to assess candidates in considering how to vote (334–335). It also requires officials, once elected, to try to do 'what the electorate had reason to expect' (341). (It does not, however, imply that representatives should strive to satisfy the people's policy preferences as such [343, 353].) When these conditions are satisfied, the People's choices of higher officials can be seen not only as controlling who occupies public office – an exercise of 'occupancy control' – but also as controlling to some degree what they will do in office ('directive control') (333–335).

These summary remarks omit important details but may be enough to show why Kolodny doesn't regard the distinction between 'direct' and 'indirect' democracy as having deep significance. The complaint about the state involves its instantiation of asymmetries of power and authority between rulers and ruled. These hierarchical relations arise in both kinds of democracy and can be tempered in similar ways – primarily by ensuring individual citizens equal opportunities to control the decisions of those who occupy highest offices. Doing so may be more complex in indirect democracy, but the basic aim is the same.

The question I explore in the remainder of this commentary is whether the perspective of tempered hierarchy that makes the distinction between direct and representative democracy seem insignificant obscures features of representative democracy that only become problematic when we look more closely at institutional aspects of political representation. I concentrate on three features that differentiate representative from direct democracy, in degree if not in kind. These are the procedures of the legislature, the distinction between legislative and executive authority,

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and the role(s) of political parties. Reflection about these features raises two related questions: whether a system of representation can be adequately tempered by the secondary factors, and whether asymmetries associated with these features might serve important political values other than tempering inferiority. We may need these other values to arrive at all-things-considered judgments about the justification and design of representative institutions.

3. What legislators do

The argument that the relationship of representation can be suitably tempered by Equal Influence assumes a model in which legislators, having been selected in competitive elections in which candidates and parties set forth policy programs, seek to carry out those programs in legislation. Legislators should 'see themselves as duty bound to follow the directives [of the voters], as a way of respecting Equal Influence, and act accordingly' (335).

Kolodny refers to this as a 'simplistic, chain-of-command model' (336). He does not say more about how a legislature might function. But whether we should understand the abstract picture of legislation as sufficiently tempered depends on how we imagine the legislature's procedures. On one traditional view, we might think of the legislature as a kind of second-level assembly, reaching judgments about proposals for law through a procedure of 'trial by discussion', as Manin (1997: 183–192) reports representative government was understood in the time of Mill. On this picture, perhaps we can imagine how, by a logic of Supersession, the hierarchy-tempering force of Equal Influence at the election stage might be carried over to the point of legislative decision.

But the organization and procedures of modern legislatures make such a picture hard to sustain. Thinking just about the U.S. Congress, most of the real work of legislation does not take place on the floor, where members might (at least formally) have equal influence over outcomes, but instead either in committees (on the 'textbook' model) or in the speaker's or majority leader's office (in contemporary 'unorthodox lawmaking', Sinclair 2016). In either model, there are likely to be substantial differences in bargaining power among members – not only between leadership and rank-and-file but also, for example, between committee chairs and their members. These asymmetries, mostly built into the procedures, influence the outcomes of the legislative bargaining required

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to secure the required voting margins on the floor (Schwartzberg & Knight 2024).

Of course, bills that emerge from these more-or-less obscure processes of negotiation are still subject to deliberation and vote in the full legislature. Perhaps this is an instance of 'Downward Equalization'. But we might wonder whether it comes too late for comfort: the agenda has already been narrowed in prior stages of a process over which members have not had equal opportunity for influence (for example, in an agenda committee controlled by leadership), and opportunities for amendment from the floor are typically limited, if allowed at all. More fundamentally, the fact that a bill emerges from intra- and interparty negotiations means that it may not present a question to which a representative's response might have been anticipated by voters when the representative stood for election, so it is implausible that voters can realistically regard their votes as exercising directive control.[4] A modern legislature could not act without some form of the structural and procedural complexity I have described. It seems inevitable that this complexity will threaten the equality of opportunity of citizens to influence legislation that the combination of Downward Equalization and Supersession aims to achieve. These tempering factors may not do much to defang the hierarchies of power and authority that a representative legislature embeds.[5]

[4] To borrow an example from Schwartzberg and Knight (2024: 126–132), those who voted for Democrats in 2008 might be presumed to have voted for healthcare reform that included creation of a 'public option', which was a prominent part of the party's platform. However, in the course of bargaining in Congress over what became the Affordable Care Act, the public option, which was opposed by the insurance industry, was dropped, as was the provision allowing the government to negotiate drug prices with the pharmaceutical industry. These changes appeared to be the only way to assemble a sufficient majority in the Senate (Rosenbluth & Shapiro 2018: 95 – 109). Was a Democratic representative who voted for the bill in that form acting in such a way that those who voted for her could be seen as exercising directive control (even a 'grown-up' voter who understands the need for compromise [395])? I am sceptical.

[5] In presenting the 'secondary tempering factors', Kolodny observes that notwithstanding the attention given to Equal Influence, this tempering factor may not actually be necessary; 'the other secondary tempering factors might be enough' (144). Might this be true in the context of legislative procedures?

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Some argue that voters tend to vote for candidates who are likely to choose as the voters would themselves, given sufficient time and information – 'a "good type" of political leader' (Fearon 1999: 54; Mansbridge 2009). If so, perhaps this last problem can be met: voters might reasonably hope that their 'good type' representative would vote as they would even on questions that were not specifically anticipated in the candidate's platform. But it is hard to see how this can be regarded as an exercise of 'directive control' because a vote for a candidate considered to be a 'good type', independently of an understanding of the candidate's issue commitments, could not be seen as issuing substantive directives with respect to those issues. 'Vote as you think best' might be a directive in name only.

To summarize, we should distinguish two concerns. One is the potential for political inequality: if hierarchy in the legislature enables some representatives to exercise more influence than others, the underlying equal influence of their constituents may be subverted. The other is that the complexity of the procedures may make the achievement of directive control by voters over representatives infeasible.[6]

Although these concerns may be troubling in the inferiority perspective, the features that generate them may serve other political values. They may enable the legislature to legislate about important public issues, rather than wither in the gridlock that would occur in the absence of effective leadership. Without the capacity to legislate effectively the legislature would fail in its duty to serve the public good over time, which is to say, to fairly serve 'interests in improvement' and protect 'rights against invasion' (2–3).

4. The legislature and the executive

'The most pressing question … is whether the People in a representative democracy … sit at the top of the decision-making hierarchy' (333). Kolodny's conception of this hierarchy does not distinguish between officials of the legislative and of the executive branches (or, perhaps, between offices responsible for deciding the content and the application of law). Since each branch comprises individuals occupying positions with superior power and authority to ordinary citizens, the 'most pressing question' in each case may be how the hierarchical relationships might be tempered. But it is worth considering whether this is all that might be asked.

[6] Thanks to Jake Zuehl for clarifying conversation.

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A distinction between legislation and execution might exist in direct democracy. Democratic Athens had an elaborate system of boards of magistrates responsible for convening the Assembly, composing its agenda, and executing its decisions (Hansen 1999: Chs. 6, 9). But they were largely subordinate to the Assembly, which is to say, the people.

Things are more complicated in a representative system. Legislative and executive offices are functionally distinct. Abstracting considerably, legislators participate in making laws on behalf of constituents. Executive officers – among other things – implement these laws by performing rulemaking and enforcement functions.[7] For purposes of exposition, we might consider each position in principal-agent terms (Brennan & Hamlin 2000: 168–169). For the legislature, we can say either that its collective principal is the people or that its individual members' principals are their constituencies. Either way, the spirit of Kolodny's view is that the principal-agent relationship should be structured to make the agents accountable to their principals in a way that gives each individual member of the collective principal an equal opportunity to influence the selection and conduct of their agents.

What might this mean for the distinction of legislative and executive power? The executive's principal, in the executive's role as implementer, would seem to be the legislature, whose policy choices the executive is charged with implementing. There is clearly an asymmetry of power: the legislature, qua legislature, has no power to implement. It must rely on the executive to interpret and secure compliance with its legislation. And the legislature, in turn, is the agent of the people, the body of natural persons at the top of the hierarchy. The critical tempering factors of this relationship might seem to be Impersonal Justification and Least Discretion: the executive should confine the use of its powers in accord with the reasons that justify the legislature's choice of policy to be implemented. This gives us a core element of the rule of law: 'ministers and public officers … must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably'

[7] The 'other things' are important. In presidential systems, presidents, cabinet officers, and others also participate in the law-making process in ways that depend on the details of the institutional structure and on contingencies like the division of partisan control between the branches. When the same party controls both branches, the president, in particular, may be the de facto leader of the process of legislation.

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(Bingham 2010: 60; compare Kolodny: 203–205). What is important is that 'public officers' responsible for executing the law should constrain themselves by 'the purpose for which [their] powers were conferred', presumably by the legislature that made the law.[8] This is different than being constrained by officers' own interpretation of the requirements of the public interest, which, under Impersonal Justification, constrains the exercise of power by 'highest officials'. Is there potential for conflict?

Intuitively, we should want implementers to be guided in their interpretation of legislative directives by the aims of the legislature in enacting the directive, insofar as they can be known (for example, from the legislative history) rather than by their own, freestanding interpretations of the public good. That is arguably the point of the separation of legislative and executive power. But this suggests that high officials of the executive branch are subject to at least one kind of constraint that legislators are not subject to, namely, a duty to interpret the legislature's directives in light of the legislature's aims in enacting them.[9]

It is a further question how such a duty might be enforced. Offhand, there are at least two (mutually compatible) possibilities. The legislature could establish procedures to oversee the work of the executive branch, or it could establish administrative procedures within the executive branch to regulate administrative rulemaking. Either way, it is not clear how doing so might be seen as sufficiently tempering the prospect of executive overreach. The idea would be that the legislature acts on behalf of the People which seeks to exercise directive control over the legislature by controlling the selection of its members. But here the logic of Supersession clouds over. In their capacities as overseers, individual members of the legislature, elected from individual constituencies, serve on behalf of the legislature as a body. Offhand, there does not appear to be any informative sense in which we can say that they have duties to their constituents to act as they led voters to expect, because it's overwhelming unlikely that they led voters to expect they would behave in any particular way when exercising the role of overseer.

[8] 'A decision-making power conferred by statute must always be exercised so as to advance the policy and objects of the Act…' (Bingham 2010: 63).

[9] I am not certain whether the point can be accommodated by invoking higher officials' 'Duty to Execute' (160–163). This doesn't appear to be aimed at the kind of problem I describe in the text. But I can't pursue the question further.

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For administrative agencies matters are even more puzzling. Although these agencies exercise powers delegated by the legislature, the delegation is relatively open-ended: agency officials are instructed to exercise discretion to implement the law in whatever way they judge is most consistent with the law as written and interpreted through the legislative record provided. One might reply that the implementers were selected by higher officials – the President, say – who were selected by the People, thus satisfying 'Downward Equalization', and are therefore indirectly under the People's control. But this is, at best, 'occupancy control'; it is unclear how it could satisfy the concern about inferiority.

Beyond this, the sense in which voters exercise Equal Influence in the selection of agency implementers is even more attenuated than the sense in which they do so in the choice of representatives. It is not even clear that equality of influence for *voters* should have any bearing on the conduct of agency implementers. As Cain (2015: 11) suggests, in the epistemic environment in which agency rulemaking and adjudication take place, the most important condition may be simply that there be at least two distinct viewpoints represented. The regulative concern would not be voters' equality of opportunity for influence but rather adequate deliberative contestation among otherwise unaccountable executive officials.

5. Parties

There does not appear to be any functional necessity for party-like associations in direct democracies. We might, perhaps, conceive of groups of citizens – 'factions'? – associated to advance common political interests.[10] But even if they existed, these groups would not likely be political parties in the modern sense because, among other features, they would lack the organizational structure and persistence over time that virtually all modern parties manifest.

On the other hand, as Schattschneider wrote, 'modern democracy is unthinkable save in terms of parties' (1942: 1). Parties exist in every modern representative democracy. Despite their differences, they can all be thought of as seeking to solve collective action problems by enabling citizens to exercise influence over the selection

[10] Our best evidence is that there were no parties in democratic Athens. There were shifting groups of political leaders in the Assembly but they did not command enduring popular followings (Hansen 2014).

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of candidates for office, the conduct of election campaigns, and the process of legislation.

Most of Kolodny's references to parties occur in the formulation of the conditions under which voting can be interpreted as the voters' exercise of directive control over 'highest officials (and bodies)'. These conditions pertain to the structure and conduct of electoral competition (334–336) and to the conduct of elected officials once in office (340–343). In these contexts, Kolodny refers to 'candidates and parties' largely without differentiating their roles. If parties play any distinctive role, qua parties, it seems to be to provide information that informs voters what their candidates will try to do if elected. They do so by adopting platforms (in 'party conventions': 341) that reflect plans for making policy if their candidates are elected. Here it is important that we can expect them to revise their plans in order to compose a winning coalition, because this might give voters at least passive influence over their plans.[11]

Is the conflation of the roles of candidates and parties a problem? A candidate is an individual contending for a public office whose responsibilities are owed to the people, or anyway to the constituency. A party, by contrast, serves a partisan purpose. Its most general function, as Schattschneider put it, is to organize conflict: it aims to mobilize a majority in pursuit of control of the government in a competitive electoral arena by identifying salient points of disagreement (1942: 207–209). Parties are artifacts of a system that depends on political competition to serve public functions. How, then, should we conceptualize the responsibilities of parties' high officials or the constraints they should observe in carrying them out?

In the U.S., although parties are not agencies of the state, they perform functions that are essential to the system of election and legislation. So perhaps their officials are subject to the same conditions that apply to the state's 'highest officials' – for example, Impersonal Justification (340) and Equal Influence (340). But it is obscure how (indeed, whether) either condition can temper the power and authority of high party officials who are required by

[11] Kolodny also notes that 'intraparty activities' might afford voters opportunities to have more active influence than the other conditions suggest, but the significance of this isn't clear (334–335, 340–341). There are some references to parties elsewhere: for example, in connection with (a) alternative forms of proportional representation systems (where representation by party is defended on the grounds that parties are organized to advance platforms by electing their candidates [362–364]) and (b) gerrymandering (Ch. 30).

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their offices to organize and carry out electoral competition – that is, to conduct themselves as partisans. This role may generate distinct and potentially conflicting legitimating conditions (Rosenblum 2008:62–66).

Beyond being competitive by design, there is the further fact that various features of the American constitutional system place the 'major parties' in advantaged positions relative to other prospective entrants in electoral competition. For example, the major parties typically enjoy preferred ballot access and preferred treatment in the campaign finance regime. An individual selected to be a major-party candidate has greater opportunity to attain public office than a minor-party candidate or one running as an 'independent'. From some perspectives on the functions of electoral competition, this may be reason to object (*e.g.*, Drutman 2020). Moreover, when structural and legal features favour a two-party duopoly – an entrenched asymmetry of power – party leaders will face incentives to collude to preserve their advantages against potential third parties. They might, for example, enact bipartisan gerrymanders or measures prohibiting 'fusion' candidacies. This might be objectionable because it involves the misuse of superior power over the conditions of political competition resulting from the major parties occupying a higher position in the hierarchy (Issacharoff 2001). Are the secondary tempering factors sufficiently robust to explain such objections? How, for example, might Impersonal Justification apply? It isn't clear.

Stepping back from the dynamics of party competition, there is also the matter of the internal organization and functioning of parties. The most important function of parties is in selecting candidates to run for office. Here, again, hierarchy can manifest itself, although now in the context of parties' procedural rules and norms. The question is the extent to which party authorities – for example, its committees and leaders – should be enabled to exert power disproportionate to that of the party's rank-and-file voters. The Democratic Party's 'McGovern-Fraser' reforms in effect, if not in intention, reduced the influence of party officials and increased the influence of ordinary voters (although, in practice, primarily issue activists) in selecting Democratic party candidates for the presidency. The more general movement toward using primaries for candidate selection has a similar effect for other offices. Yet, there is widespread agreement that these measures that mitigate hierarchies of power and authority within parties have also weakened them as mechanisms for selecting good candidates, advancing platforms capable of attracting majorities, or simply winning elections (Rosenbluth & Shapiro 2018; Schlozman

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& Rosenfeld 2024). Once again, the question is whether the materials on offer can inform judgment about whether these asymmetries can be adequately tempered. And, as before, there is the prospect of conflict between tempering hierarchies and enabling parties to serve other valuable purposes.

6. Conclusion

I have suggested that various structural features of political representation may render its institutions less amenable to tempering than it might appear at a higher level of abstraction. I have also suggested that we should not allow concern for relations of inferiority within these institutions to obscure the role of other values like effectiveness and competitive fairness in judgments about the institutions' legitimacy.

These suggestions need not amount to objections. Kolodny's 'positive conjecture' about the significance of inferiority does not imply, nor does he claim, that we do not also have other interests – for example, in avoiding offenses to freedom and having access to the resources for living better lives. The normative outlook is explicitly pluralist (88–89, 402–403). Kolodny observes disarmingly that he does 'not view this book as solely, or even primarily, a contribution to democratic theory' (9). This is too modest; the book is a deeply rewarding contribution to democratic theory. But his reticence leaves open the possibility that a theory of political morality adequate to the complexity of political representation might need elaboration to take account of these other values. *The Pecking Order* is mainly an argument for the 'positive conjecture'. The argument does not exclude this further possibility.[12]

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