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Two-dimensional Democracy,  
National and International

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## Two-dimensional Democracy, National and International

Philip Pettit

Drawing on a background in republican thought, I have argued elsewhere that democracy should have an electoral and a contestatory aspect.<sup>1</sup> I argued in a normative spirit that this two-dimensional ideal is more defensible and more commanding than the more common, purely electoral alternative. But I believe that this usage of the word ‘democracy’ also picks up some aspects of common talk, since few of us would happily apply the word to regimes, no matter how electorally unimpeachable, that failed to ensure the independence of the courts and to provide thereby for a basic form of contestation.

My aim in this paper is to recast the two-dimensional way of thinking about democracy, with the aim of preparing the ground for a consideration of what democracy should require in the international domain: in the context of international organizations and, more generally, cooperation among national governments. In section 1 I look at the two-dimensional ideal from an abstract perspective; in section 2 I consider how it might be implemented in a national context; and in section 3 I consider how far the ideal might be approximated in the international domain.

### 1. The two-dimensional ideal

The word ‘democracy’ comes from the Greek words ‘demos’ and ‘kratos’, ‘people’ and ‘control’. Perhaps the best way into the two-dimensional ideal is to recognize that each of these words is ambiguous in an interesting way.

The word ‘people’ is ambiguous, because it can refer to the people considered as a collective body, or to people considered in their several or plural identities. Even in talk of ‘we, the people’, it is not clear whether the reference is to ‘we, the single American people’, or ‘we, the people of America’. E pluribus unum, the motto goes. But which are the people? The plures or the unum, the plurality or the singular, the many or the one?

Apart from this ambiguity between the people as plurality and the people as collective, there is a further question as to whether the people as collective should be understood as a

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<sup>1</sup> Pettit, P. (1997). Republicanism: A Theory of Freedom and Government. Oxford, Oxford University Press. The lines pursued in this article, however, are much more closely related to Pettit, P. (2000). "Democracy, Electoral and Contestatory." Nomos 42: 105-44.

collective agent or just as an unorganized collection. Someone like Rousseau clearly thinks of the people as an agent with its own distinctive mind and will and mode of action; someone like Schumpeter thinks of the people merely as a loose assemblage of distinct agents, each with his or her own interests and intentions.<sup>2</sup> Here I shall ignore this second ambiguity in the notion of the people, however, and concentrate only on the first.<sup>3</sup>

From the earliest days of modern democracy, in England of the 1640's and 1650's, the distinction between the people as collective and the people as plurality already raised a problem. On the one side were those who thought collectively and argued for absolute parliamentary sovereignty on the grounds that 'The people have reserved no power in themselves from themselves in parliament'. On the other were those who contested this, arguing that the people as collective — the people as represented in parliament and government — could do damage to the people as plurality. Thus a leader of the Levellers held that the purpose of government was the 'severall weales, safeties and freedoms' of people — the word 'severall' is important — and that their protection required checking the power of the people in their collective, parliamentary incarnation.<sup>4</sup>

The word 'control' is ambiguous in a less obvious manner than the word 'people'. There are two contrasting ways in which any agency may maintain control over a process. One is by exercising active control, whether in its own right or via someone who acts in its name. Such active control, whether direct or indirect, involves adjusting various means to the end of securing desired outcomes. The other mode of control is virtual, as distinct from active.<sup>5</sup> It involves standing back while some other agency actively controls the process but assuming a disposition to amend what the active controller does, should the outcome not prove satisfactory. Such virtual control will occasionally be activated, in which case it ceases to be wholly virtual, but it constitutes a form of control, whether activated or not. By its very nature it will ensure that independent agents act appropriately. There may be little cause for the control to be activated,

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<sup>2</sup> Rousseau, J.-J. (1973). The Social Contract and Discourses. London, J.M. Dent & Sons Ltd; Schumpeter, J. A. (1984). Capitalism, Socialism and Democracy (Harper Torchbooks). New York, Harper Torchbooks.

<sup>3</sup> I explore the relevance of this ambiguity in 'In Democratic Space', The Pufendorf Lectures, Lund University, 2005.

<sup>4</sup> Morgan, E. S. (1988). Inventing the People: The Rise of Popular Sovereignty in England and America. New York, Norton; p. 65 and 71.

<sup>5</sup> I introduced this distinction, in a rather different context, in Pettit, P. (1995). "The Virtual Reality of Homo Economicus." Monist 78: 308-29; reprinted with revisions in Pettit, P. (2002) Rules, Reasons, and Norms: Selected Essays, Oxford, Oxford University Press. For the use of a similar idea see Frankfurt, H. G. (1988). The Importance of What We Care About. Cambridge, Cambridge University Press.

indeed, since agents who become aware of the virtual controller may try to avoid triggering intervention by acting appropriately.

We can think of active and virtual control on the model of author and editor. Active control is exercised by the author who writes a report for a newspaper, even if the piece is ghost-written and the authorship indirect. Virtual control is exercised by the editor who can amend or reject what is written, should it not be the sort of thing wanted. Even if there is no editorial intervention, the shape of the final publication is something for which the editor will have to take as much responsibility as the author. And this editorial responsibility may be increased further in two ways. Either because the editor does actually intervene. Or because the editor's presence inhibits the author, prompting efforts to anticipate and satisfy the editor's preferences.

With these distinctions drawn, we can construct a matrix representing four possible modes of democratic control.

	Authorial control	Editorial control
The collective people	1.	2.
The plural people	4.	3.

The notion of people plurally or severally exercising authorial control over government, as in box 4, does not make much sense but the three other possibilities do. First, the collective people may exercise authorial control, whether directly in plebiscites and other forms of participation, or indirectly via the election of a representative government. Second, the collective people may exercise a sort of editorial control over government to the extent that they can reject government proposals in plebiscites or electorally replace the personnel in government. And, third, the plural people may exercise editorial control through contesting what government does under a dispensation that sets the terms and the channels of legitimate, potentially effective contestation. This plural control may involve individual or class action — perhaps in the courts, perhaps on the streets — and it may be indirect as well as direct, depending on whether the contestation is carried forward by the immediate plaintiffs or by formal or informal representatives.

The salient divide emerging here is that between authorial democracy and editorial democracy and it is those two sides that I have in mind when I speak of the two-dimensional ideal of democratic control. Government will be authorially controlled by the collective people under electoral arrangements whereby issues are decided by plebiscite or representatives are chosen to decide them. And government will be editorially controlled by the people under arrangements of a broadly contestatory kind. The contestation in which that control is exercised

may be itself mediated via elections in an act of the collective people, as when a government fails re-election or fails to win a referendum on some issue. But it will be more typically exercised in acts of the plural people, as when individuals or groups of individuals appeal against the government in any of a variety of forums: more on these in the next section.

Why should we take democratic control to require both of these aspects? Without the authorial, electoral element, a number of familiar dangers would threaten the polity. Various democratically attractive options would be liable go unnoticed and unexplored in the absence of electoral competition; a dynasty or clique might be able to hold onto power and put its own interests about the whole; and government would not be motivated to try to establish a claim to re-election. Without the editorial, contestatory element, equally salient losses would loom. A tyranny of the majority, to invoke the familiar spectre, might materialise, whether on particular issues or across a whole range of issues. And even more ominously, there might well be a tyranny of the elite: a regime under which those who are insiders by dint of office or connection or wealth are able to hide what is going on in the bureaux of government and to put their own interests ahead of the common interests of the electorate. I have argued for these points elsewhere and I shall not explore them further here.<sup>6</sup> I assume that democracy properly has two aspects and I go on in the next section to look at how those aspects are or can be realized in national polities.

It is important to see how the two sides of democracy operate in the domestic context; this will enable us to identify democratic possibilities in the international domain that might otherwise remain invisible. That there are two sides to domestic democracy is denied under conventional wisdom. The established way of thinking, as Christopher Eisgruber notes, associates democracy wholly with authorial or electoral control.

Conventional wisdom assumes an equivalence between ‘the people’ on the one hand and ‘the legislature’ or ‘the voters’ on the other. It accordingly equates ‘self-government’ with ‘government by legislatures’ and ‘government by voters’, and it regards judicial review and the Constitution as impediments to self-government, since they manifestly limit the freedom of legislatures and voters. These views are accepted more or less unreflectively not only by critics of judicial review, but by many of its most able defenders.<sup>7</sup>

## 2. Democracy in a national context

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<sup>6</sup> See Pettit, P. (2000). "Democracy, Electoral and Contestatory." *Nomos* 42: 105-44. For background, see Pettit, P. (1999). *Republican Liberty, Contestatory Democracy*. *Democracy's Value*. C. Hacker-Cordon and I. Shapiro. Cambridge, Cambridge University Press.

<sup>7</sup> Eisgruber, C. L. (2002). "Constitutional Self-Government and Judicial Review: A Reply to Five Critics." *University of San Francisco Law Review* 37. For background see Eisgruber, C. L. (2001). *Constitutional Self-Government*. Cambridge, Mass., Harvard University Press.

## The authorial aspect

The authorial control of the collective people would seem to require, on the face of it, a participatory regime under which the people regularly assemble in order to establish the laws or under which they cast their votes on relevant issues without ever actually assembling. So why, then, does no existing regime make much place for this mode of self-government? Why does the first aspect of democracy invariably get implemented, and often get interpreted, as requiring a representative rather than a participatory dispensation?

The usual line has been to say that representative government is feasible, participatory government not, and that the representative way of doing things is the next best thing to the participatory. This line has undoubtedly had some currency and it fits well with the picture projected by democratic absolutism.<sup>8</sup> But it is not clear that it can survive for long as a justification for representation rather than participation. For it should now be possible — certainly it will soon be possible — for the people to rule by regular, electronically registered plebiscite. So why not resort to this mode of collective, authorial control? Why not opt for plebiscitary rather than parliamentary democracy?

The two-dimensional version of the democratic ideal can give a ready, principled answer to this question. If authorial democratic control took the form of rule by referendum, then that would compromise the possibility of important forms of editorial democratic control. There are many considerations that might be mentioned in support of this claim but I shall rely on one simple, though abstract line of argument.<sup>9</sup>

If the people are going to be able to have an editorial form of control over government, then the decisions of government must be authorially controlled in a more or less rational way, on the basis of considerations that get to be generally admitted as relevant to the determination of public affairs. Only if they are controlled in that manner can they be challenged by argument as distinct from force or threat; the challenge may take the form of questioning the relevance of the avowed grounds for a decision, or questioning the support that they allegedly provide (Pettit 1997, Ch.6). But if the decisions of government are authorially controlled by popular

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<sup>8</sup> Manin, B. (1997). The Principles of Representative Government. Cambridge, Cambridge University Press.

<sup>9</sup> Other considerations are, for example, that the people, voting en masse, will be particularly susceptible to the passions of the crowd, as in calling for levels of criminal punishment that are counter-productive. Or that they will be prey to the expressive desire to stand by certain standards — say, in the prohibition of alcohol or drugs or prostitution — when this may make things worse by their own lights. Or that they will not have the time or information to be able to resist the efforts of an organized minority interest to persuade them of a certain line — say, in matters of business regulation — even when that is not likely to be for the overall good. See for example Pettit, P. (2004). "Depoliticizing Democracy." Ratio Juris 17: 52-65.

referendum, then they are liable to display little or no rationality. That is not because ordinary folk are unlikely to be moved as reason requires but stems rather from a structural feature about the aggregation of decision and judgment over issues that are logically connected with one another, as issues will inevitably tend to be. Even if individuals are completely rational in the votes they cast in a series of referenda, with each satisfying constraints of consistency and the like, it is entirely possible that the results of those referenda will constitute an irrational package.<sup>10</sup>

This possibility can be established with the help of a toy example. Suppose that three people, A, B and C, have to determine their views as a group on each of four propositions, perhaps considered at different times: whether to hold taxes at current levels, whether to increase defence spending, whether to increase other spending and whether to balance the budget. And suppose that they are each individually consistent in the judgments they make, and that the procedure they follow for generating a group judgment is to take the group to assent to a proposition in the event of a majority supporting it, and to dissent otherwise. It is entirely possible that the members of the group, while being individually consistent, will cast their votes on the pattern involved in this matrix.

	Hold taxes?	Increase defence?	Increase other?	Balance budget?
A.	Yes	Yes	No (reduce)	Yes
B.	Yes	No (reduce)	Yes	Yes
C.	No	Yes	Yes	Yes

But if they do cast their votes on that pattern, then a majority will support holding taxes at their current level, a majority support an increase in defence spending, a majority support an increase in other spending too, and a majority support balancing the budget. Assuming that no other sources of government finance are available, the group as a whole — A-B-C — will be committed to what is in effect an inconsistent set of judgments:

A-B-C	Yes	Yes	Yes	Yes
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The lesson of the example is that individual rationality is no guarantee of collective rationality, under a procedure of voting that moves mechanically — as plebiscitary voting would have to do — from individual sets of judgments about related issues to a collective, agreed set of

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<sup>10</sup> In the argument that follows I draw on material summarised in Pettit, P. (2003). *Deliberative Democracy, the Discursive Dilemma, and Republican Theory*. *Philosophy, Politics and Society Vol 7: Debating Deliberative Democracy*. J. Fishkin and P. Laslett. Cambridge, Cambridge University Press: 138-62. The discursive dilemma is a generalization of the doctrinal paradox identified by Lewis Kornhauser and Larry Sager. See, for example, Kornhauser, L. A. and L. G. Sager (1993). "The One and the Many: Adjudication in Collegial Courts." *California Law Review* 81: 1-59.



judgments. Indeed, it turns out to be logically impossible for a procedure to guarantee rationality in this move from the individual to the collective level, if it is supposed to work for all profiles of individual judgments, and if it treats each individual and each issue even-handedly: that is, if no individuals have a special, dictatorial standing, and no issues are such that how they are resolved determines how others are to be resolved.<sup>11</sup>

But if individual rationality is no guarantee of collective rationality under the sort of procedure given, then the only group that can ensure a rational pattern of judgments, and a rational pattern of judgment-based action, will be the flexible organization that can respond to problems of collective irrationality and take steps to overcome them. The steps taken may involve individuals in rethinking their votes as to how the group should judge on a particular issue or it may involve following an agreed procedure for resolving the problem. This may privilege some members by allowing them to resolve the problem in the group's name, for example, or it may privilege the group's judgments on certain issues — say, earlier issues or issues of a more principled kind — by allowing those judgments to dictate the line that is to be taken overall.

The lesson for plebiscitary rule is straightforward. The people as a collective body would not have the capacity to respond in these ways to problems of collective rationality. They are too great in number, too loose in organization, too changing in membership: this body, in the words of a seventeenth century commentator, is 'in continual alteration and change, it never continues one minute the same, being composed of a multitude of parts, whereof divers continually decay and perish, and others renew and succeed in their places' (Morgan 1988, 61).<sup>12</sup> Let the collective people have a plebiscitary kind of authorial power, then, and the editorial aspect of democratic control is bound to be compromised. There will be no room for discursive contestation, since the agent whose decisions are to be contested will behave without rhyme or reason; it will be a presence in people's lives that is as capricious as the wind and the weather.<sup>13</sup>

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<sup>11</sup> List, C. and P. Pettit (2002). "The Aggregation of Sets of Judgments: An Impossibility Result." *Economics and Philosophy* 18: 89-110. On the difference between this result and the Arrovian impossibility theorem, see List, C. and P. Pettit (2004). "Aggregating Sets of Judgments: Two Impossibility Results Compared." *Synthese* 140: 207-35.

<sup>12</sup> Morgan, E. S. (1988). *Inventing the People: The Rise of Popular Sovereignty in England and America*. New York, Norton, p. 61.

<sup>13</sup> The only way of ensuring a rational, plebiscitary series of judgments on matters of law and government would be to set up an interpretative body that would dictate the line which should be taken in the event of inconsistent or otherwise irrational judgments. But to adopt that sort of approach would be to take power away from the people as a whole and to lodge it with the interpretative body. The input from referenda would only partially constrain the interpretation of the people's mind on the part of this body, and the people would be incapable of acting with a view to shaping the discretion available to that interpreter.

If the collective people are to have the authorial, electoral power that leaves room for a corresponding form of editorial, contestatory power — if the two-dimensional ideal is to be endorsed — then they must operate through representatives; democracy must assume a parliamentary rather than a plebiscitary form. The resort to representative government may not guarantee rationality — a familiar, melancholy lesson — but it at least makes rationality more accessible.<sup>14</sup>

There are a variety of procedures whereby a legislature can ensure that its decisions satisfy the minimal criteria of rationality. In the Westminster system, for example, rationality is ensured so far as a single political party has control of the laws that are passed in the decisive House of Commons; a political party will have to be well organized enough, on pain of electoral ridicule, to be able to ensure that it satisfies consistency and other such conditions across the different laws and initiatives it supports. In the Washington system rationality appears to be ensured by a more indirect route. The Congress is not subject to party discipline in the same measure, and so is not protected on that front from the danger of collective irrationality. But it is subject to the discipline of being interpreted by the Supreme Court as if it were a rational center of judgment and intention, and it has a reason therefore not to be so wayward as to give the Court unlimited, interpretative discretion.

### The editorial aspect

There are two preconditions that must be fulfilled if there is to be any hope of the people having editorial, contestatory power, in particular a power of contestation by argument rather than by brute force or defiance. I shall assume that these preconditions are fulfilled in discussing the means whereby contestatory power may be exercised.

The first precondition, already mentioned, is that a reserve of reasons that are relevant to the determination of public affairs has been established in common consciousness. A stock of considerations that are admitted as relevant on all sides will normally appear as a side-product of public and parliamentary discussion of public matters. Such debate can go forward only so far as people manage to sift out some considerations that all will countenance as relevant, even if they assign different weights to them. Assuming that there is an agreed stock or relevant

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<sup>14</sup> On related themes see Urbinati, N. (2000). "Representation as Advocacy: A Study of Democratic Deliberation." Political Theory 28: 758-86.

considerations available amounts to assuming that a tradition of such discussion and deliberation has been established.<sup>15</sup>

The second precondition for the exercise of contestatory power is closely related. Not only must there be a stock of admissible considerations established in common consciousness; it must generally be clear what government is doing and how it claims to justify what it does in terms of those considerations. The reserve of admissible reasons must be supported by a regime of governmental transparency. Such a regime might be fostered by institutional measures such as those requiring decision-making bodies to put on record the reasons allegedly grounding their choices.

Assuming that there is a reserve of admissible reasons and a regime of transparency in place, how is the editorial power of the people in a democracy liable to operate? What are the measures whereby the people can expect to be able to keep the government in check, whether collectively, individually, or in middle-sized groupings?

I believe that there are three broadly distinct fronts on which the people may exercise editorial, contestatory power over government. They involve, respectively, reactive, representative and regulative forms of contestation and control.

#### Reactive contestation

The reactive form of control materializes so far as the authorities are guided in their decision-making by people's reactions or by the anticipation of how people will react: this, so far as they are inhibited by the fear of provoking a negative reaction, or reinforced by the attraction of provoking a positive. There will be formal channels in any democracy proper whereby people can react to government by appeal to the courts, or to various tribunals covering administrative matters, or to commissions governing issues like human rights, or to ombudsmen and the like. Assuming that these bodies operate independently and impartially, recourse to them represents a first and fairly obvious way in which the people, even individual people, have contestatory power over government. People will exercise that power whenever they actually explore the appellate routes described but they will also exercise such power so far as they are positioned to lodge appeals, should they see government as behaving in an objectionable way. This is particularly so, given that government will be aware of the possibility of appellate responses and will have reason to try to avoid triggering such responses.

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<sup>15</sup> This will be reminiscent of Rawls. See Pettit, P. (2005). "Rawls's Political Ontology." Politics, Philosophy and Economics 4: 157-74.

But reactive power of the kind I have in mind under the first heading also includes the more amorphous power exercised by people so far as government is concerned about public opinion. Suppose that the people or at least certain classes or groups of people are cued to the normative standards expected in public life, are alert to the possibility of shortfalls, and are willing to express themselves forcibly: they display the 'refractory and turbulent zeal' that was praised by Adam Ferguson, the eighteenth century Scottish thinker.<sup>16</sup> And suppose that the media whereby people are alerted to what is happening on the public scene are independent of government and in sufficient competition with one another to constitute reliable sources of information and commentary. Under any such scenario we must expect government to be controlled in serious measure by the power of public opinion.

The control will be obvious when opinion is activated against government, with people writing letters to newspapers, switching to the other side at election time, taking to demonstrations on the streets, resorting to civil disobedience, or even practising open resistance. But the control can be effective, even when no active opposition materializes. The fact that such opposition is always possible, and that it has some chance of success, will mean that people retain their power even when they are happy enough not to protest. And that will be reinforced by the fact that government is likely to anticipate the movements of public opinion and to adjust preemptively in the attempt to keep the public happy.<sup>17</sup>

The rule of public opinion goes back to the origins of modern democracy.<sup>18</sup> Oliver MacDonagh provides a nice example of its influence in his study of the emergence of the administrative state in Victorian Britain.<sup>19</sup> He shows that state-sponsored initiatives associated with improvements in factory conditions, in the conditions on emigrant ships, and in the treatment of children, emerged and stabilized in cycles involving: the revelation of scandal, popular outrage at the scandal, and a government response to that outrage. It was not the election of reforming politicians that led to those changes, he maintains, but rather the fear on the part of government of not seeming to the public at large to be responsive to issues on which popular feeling ran high.

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<sup>16</sup> Ferguson, A. (1767). An Essay on the History of Civil Society. Edinburgh, Millar and Caddel (reprinted New York: Garland 1971), 167.

<sup>17</sup> Habermas's work on the public sphere is very enlightening here. See for example Habermas, J., (1989). Habermas on Society and Politics: A Reader. Boston, Beacon Press.

<sup>18</sup> Gunn, J. A. W. (1993). "Opinion in Eighteenth-Century Thought: What did the Concept Purport to Explain." Utilitas 5: 17-33.

<sup>19</sup> MacDonagh, O. (1958). "The 19th century revolution in government: a reappraisal." Historical Journal 1; MacDonagh, O. (1977). Early Victorian Government. London, Weidenfeld and Nicolson.

## Representative contestation

The second front on which people may enjoy editorial, contestatory power in relation to government may be described as representative rather than reactive. What I have in mind here is the control to which government is subject so far as it has to have an eye, not to the people as such, but rather to certain representatives of ordinary people. I said earlier that parliamentary democracy provides for the possibility of contestatory power, through ensuring that government can be rational and reason-bound. But parliamentary arrangements serve to implement contestatory power as well as making it possible. For parliamentary representatives, especially those who are not affiliated with the party in power, will be motivated to interrogate the doings of government and, in particular, to interrogate them in a way that will elicit a degree of popular support. The exercise and the anticipation of such parliamentary opposition will serve to control government in some measure and, so far as it is tied to the possibility of popular support, will boost the contestatory power of the people.<sup>20</sup>

But it is not just formal, elected representatives who can give form to this contestatory power. Of perhaps even more importance in contemporary democracies are those non-parliamentary representatives that we endorse so far as we give our support to one or another particular cause: to causes related to the environment, education, public health, consumer issues, gender issues, or whatever. The bodies and movements which promote those causes have got to be alert to the popular support they command and to the extent to which they carry influence with government, forcing it to anticipate and take account of their challenges, they will increase the contestatory power of ordinary people. They are probably more important in this role, indeed, than formal, elected representatives. The arrangements that make such influence possible, of course, are likely to open up government to the influence of more sectionally minded lobby groups. This latter influence will need to be resisted in a good institutional design — not that such a design has yet been found — but this is not to place to go into that issue.

## Regulative contestation

Regulation often operates via sanctions — penalties or rewards — that attach to what those in government do. But equally often, as we shall see, it operates via arrangements that

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<sup>20</sup> It is worth noting that contestation of this kind is treated as essential to any democratic regime in Dahl, R. (1956). A Preface to Democratic Theory. Chicago, University of Chicago Press.

screen out certain possibilities that would otherwise be available or that screen in possibilities of a novel kind.

Regulative arrangements are already necessary in order to promote fulfilment of the preconditions for a contestatory regime; in order to make possible various forms of reactive and representative contestation; and in order to shape electoral processes. Regulation may be invoked to require those in government to publicise the reasons for their decisions, and to ensure a regime of relative transparency. And regulative arrangements will inevitably be involved in setting up procedures whereby individuals can appeal against government, in establishing a role for a legislative opposition, and in creating the assured space sometimes given to the representatives of various social movements. But regulative arrangements can serve also in quite independent ways to assert the contestatory power of ordinary people. We can think of them as steps adopted by the people — strictly, in the name of the people — to assert their editorial, contestatory rights over government.

The most obvious way in which they can serve this function is by putting in place sanctions or screens against governmental behaviour that would certainly be contested in a reactive or representative manner, were it to materialise, and contested with good, palpable reason. This mode of regulation pre-empts the reasonable contestation that such behaviour would elicit, and renders it unnecessary. Without endorsing any particular provisions, we can see many constitutional constraints on government — written or unwritten — as means whereby the editorial power of the people is implemented in this fashion. Those constraints will include restrictions on how democracy can be organized, on the domain over which government power may be exercised, on the various initiatives that government may pursue within that limited domain, and on the form that permitted initiatives can take. Thus they may require that elections and the appointment of unelected officials meet various conditions; they may limit the extent to which government may intrude into people's private lives; they may protect particular rights on the parts of individuals; and they may impose rule-of-law requirements on government action.

But there are also other ways in which regulation may empower people in a contestatory manner. These all involve screening new possibilities into existence, rather than just imposing constitutional or quasi-constitutional constraints on how government is exercised. Two possibilities stand out, one of which involves depoliticizing government, the other imposing requirements of consultation.

The depoliticizing initiative takes the form of creating various roles or bodies to which people are appointed by an established procedure, and then allocating to them decisions that it

would be dangerous to leave in the hands of elected representatives: dangerous, because of the temptations that elected representatives would have to let their choices be dictated by inappropriate considerations. The courts, considered in one way, are authorities of that kind. But so, for example, is the central bank that operates at arm's length from government and is given charge of interest-rate and exchange-rate policy. And so is the electoral commission to which many countries have given responsibility, again at arm's length from government, for determining electoral boundaries. Decisions on interest-rate policy are of such immediate concern to many voters that it would be difficult for representatives to ignore their urgings and take a sufficiently long-term view. And decisions on electoral boundaries are of such personal concern to the representatives themselves that it would be almost impossible for them not to let their own advantage determine the line they argue on such matters. In these areas non-political appointees may be better able to act appropriately, according to considerations that all admit as relevant, than actors of a political kind.<sup>21</sup>

The depoliticizing initiative might be extended to include a range of similar functions that would be better exercised at arm's length from elected representatives. There are open questions as to how far depoliticisation should go. But there are a number of cases where we might expect considerable agreement on depoliticizing initiatives. The legislation that sets up a bureau of statistics that will provide regular data on the society and polity, without any influence from the government of the day, is one example. Another is the legislation that provides for the creation of an auditor general with responsibility for providing independent reports on the various costings and outlays that government makes. And a third is the arrangement under which an electoral commission makes districting decisions, subject to the residual control of the legislature.<sup>22</sup>

Apart from the constitutional and depoliticizing moves, another initiative whereby people's contestatory power can be regulatively asserted requires government to consult with the public, and perhaps with various named bodies, when drafting bills and considering decisions in different domains. Ex ante consultation is a variant means of securing ends that might otherwise have elicited ex post protest and appeal. The forms in which government consults with people

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<sup>21</sup> The principle behind this allocation of power is one that can be found among the American founders, as argued in White, M. (1987). Philosophy, The Federalist, and the Constitution. New York, Oxford University Press. It would match incentive and opportunity in such a manner that the prospect of good government — government that is well guided by the considerations generally countenanced as relevant — is maximized. This approach is also endorsed in the argument of Eisgruber, C. L. (2001). Constitutional Self-Government. Cambridge, Mass., Harvard University Press.

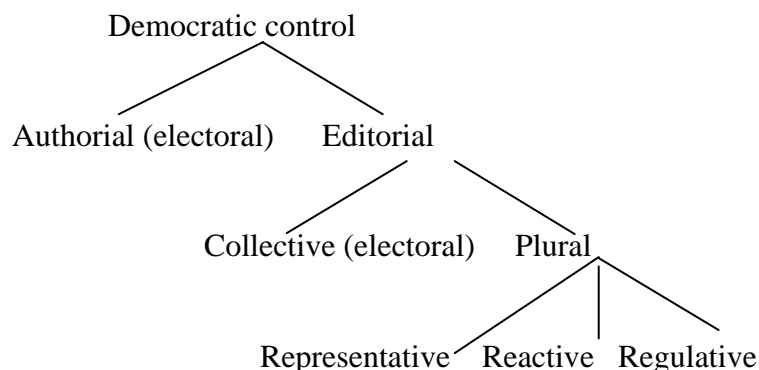
<sup>22</sup> For a suggestion that criminal sentencing policy might be put in the hands of such a body, see Pettit, P. (2002). "Is Criminal Justice Politically Feasible?" Buffalo Criminal Law Review 5: 101-24. For a broader argument on similar lines see Pettit, P. (2004). "Depoliticizing Democracy." Ratio Juris 17: 52-65.

may vary greatly but one that should surely recommend itself is the sort of deliberative opinion poll that James Fishkin has been proposing.<sup>23</sup> This would randomly select a sample of people from the relevant area, bring them together to discuss and seek information on the matters under consideration, and then allow them to record their informed views on those issues. It would provide government with a well-grounded view of popular feeling and would not be prey, like many forms of consultation, to the excessive influence of particular interest groups and lobbies.

### 3. Democracy in an international context

To sum up the point that we've reached, democracy has two aspects, authorial and editorial; democracy is authorial so far as it gives the collective people direct or indirect control of government; democracy is editorial so as it gives people, whether in a collective or plural identity, the capacity to challenge government decisions; and as a feature of the plural people editorial democracy may be representative, reactive or regulative in character.

These distinctions give us the following tree diagram.



What lessons does our discussion carry for the consideration of democracy in the international domain? This question will be the focus of the remainder of the paper.

It is a frequent complaint that with the growth of international cooperation and the appearance of more and more international organizations, the ideal of democracy is being compromised. The suggestion is that those who run the emerging networks and institutions, being unelected appointees, now have a degree of power over people's lives that is democratically scandalous; it represents a new form of oligarchy with the oligoi — the few — being the functionaries in charge of these international entities.

The functionaries imagined may be the commissioners in the European Union and the officers in their cabinets; or the diplomats and bureaucrats at the United Nations; or the officials

<sup>23</sup> Fishkin, J. S. (1997). The Voice of the People: Public Opinion and Democracy. New Haven, Conn., Yale University Press.



of the world-wide organizations that regulate finance, trade, drugs, travel, and the like;<sup>24</sup> or the civil servants seconded to a variety of less formal, transgovernmental networks;<sup>25</sup> or of course the judges on various international courts and tribunals. They will not be elected representatives, at least not in the vast majority of cases; election would just not be feasible. At best, they will be appointees of the various national governments involved. And even if they are appointees of governments, they will often have to be responsible to the institution where they operate, not to the governments that gave them their position; otherwise the institution would not be able to function effectively. The functionaries will have a relatively independent status.

How serious is the complaint about international institutions? If we think of democracy in purely authorial and therefore electoral terms, then it is very serious indeed. Let the essence of democracy be said to consist in a collective people asserting itself as the absolute sovereign in matters of government, and the transfer of power to international bodies is going to seem like a betrayal of democratic ideals. Someone may argue that the transfer of power will be fine so far as the governments which do the transferring reserve the right to secede from any agreement made. But this is not convincing. By entering various international networks and organizations of the kind envisaged here, national governments effectively precommit themselves and their successors to remaining there. For once they have entered, the costs and penalties that unilateral defection would trigger become so enormous that unilateral defection ceases to be a feasible option. The contract whereby a government binds itself internationally can look like a slave contract in which the sovereign people signs away its power of authorial self-determination, or at least some aspects of that power.

I conclude that if democracy is a purely authorial and therefore electoral ideal, then democrats are bound to look with a cold, even implacable eye at the growth of international institutions of government. But this conclusion need not be cause for despair. For international institutions need not look so irredeemably anti-democratic under the alternative, two-dimensional picture of democracy. I hope to open up this way of seeing those institutions in the remaining part of this essay. I argue, first, that the absence of electoral democracy in the international domain is not as serious a deficit as it would be in the national; second, that there is no reason to despair about the prospect of an effective contestatory democracy in this domain; and third, that in any case many of the international bodies envisaged should be welcomed by

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<sup>24</sup> For a good overview of these organizations see Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press.

<sup>25</sup> On such networks, see Slaughter, A.-M. (1997). "The Real New World Order." Foreign Affairs 76: 183-97 and her recent book Slaughter, A.-M. (2004). A New World Order. Princeton, Princeton University Press.

democrats, on the grounds that they enhance contestatory democracy on the national scene. The argument is not that the current picture is particularly bright, only that it is not as dark as it might have seemed; however bad things may actually be, at least they are not unimprovable.

#### First claim

What are the pragmatic advantages of having a democracy on the national front that is authorial as well as editorial? Three obvious advantages, which I already mentioned as reasons to have an authorial side to democracy, are these:

- that the competitive pursuit of votes ought to create an atmosphere in which would-be politicians explore every possibility for using the state to further interests that all would avow: for promoting the common good;
- that it ensures in most contexts that no dynasty or clique can lay hold of power indefinitely, and that it thereby reduces the likelihood of corruption;
- that it creates an especially powerful channel for collectively contesting and checking government, holding out the prospect that those in power will not be re-elected if they do not perform up to promises and expectations.

The first thing to say about international institutions is that the lack of electoral democracy does not hold out the same problems there that it would on the home front. In principle the advantages mentioned can be achieved among international bodies in the absence of democratic election. The fact that national governments have to sign up to these institutions, and that they have every reason to explore the good that can thereby be achieved, means that the search for mutually beneficial ventures can flourish without the discipline of a competition for office. The fact that the functionaries of international institutions are appointed for limited terms means that there is no particular danger of the dynasty or clique taking over, though there is still the danger of an entrenched, self-serving bureaucracy. And the fact that the desire for re-election does not discipline those functionaries can be balanced by the presence of other contestatory measures. This last observation connects with the second of the three claims I want to make.

#### Second claim

The second claim is that there is ample scope for contestatory democracy in regard to international institutions, though this has not been fully explored in existing regimes. Indeed it may even be that the prospect of achieving such democracy is better on the international scene than on the national. The preconditions for contestatory democracy are, on the one side, that there is a reserve of considerations admitted on all sides as relevant in the resolution of issues

and, on the other, that there is a regime of transparency in place under which decision-making authorities are subject to unavoidable scrutiny. Both of these conditions ought to be capable in principle of being satisfied. There are powerful agencies available — national governments — that will have an interest in establishing the terms of reference under which the body operates, and in maintaining the maximum level of scrutability to ensure compliance with those terms. Such governments will be much more powerful in relation to international institutions than are individuals in relation to national governments; they are fewer in number relative to those institutions, and they will often have been party to designing and creating them.

Just as the preconditions for contestatory democracy can be assured in the international domain, so it is possible for reactive, representative and regulative disciplines to implement the power of ordinary people on this front. Take the reactive category first. The reactive power of ordinary people can be made effective so far as there are channels of appeal available for individual or perhaps class action, channels that can be facilitated by national governments which have an incentive to represent themselves as champions of their citizens. And that reactive power can be increased dramatically, of course, so far as a climate of public opinion gets established that can help to keep the international institutions in check. The formation of such a constraining body of public opinion should be capable of being bolstered by the interests of national governments in publicizing any signs that an international institution is not performing according to its brief. It is not by any means certain, of course, that there will be a convergent body of opinion across the citizenries of different countries; after all, those peoples may have different interests on any issue. But the existence of agreed terms of reference should at least create a pressure towards convergence.

Now to the representative category of contestatory power. As things currently stand with most international institutions, the only representatives who can implement a contestatory power on people's behalf are those who operate via international, non-governmental organizations. But the record of such bodies, if not impeccable, is certainly not bad.<sup>26</sup> Perhaps because the international arena is of such importance, and because it is a scene in which different national movements can combine their strength, non-governmental movements have achieved a high degree of salience here. There is no guarantee, of course, that they will invariably speak for the interests that are widely spread among ordinary folk but, as with any representative regime, there is some reasonable prospect that they will; such movements depend on securing popular support

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<sup>26</sup> See Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press.

and finance for their survival and they are generally fairly open to the influences of their own unpaid memberships.

Where non-governmental, quasi-popular bodies can have an influence, it may be said, so can lobby groups that speak for special interests, corporate and otherwise. Won't this mean that decision-making in international bodies will be vulnerable to being warped by self-serving pressure groups? The possibility can't be denied, of course, but there should be just as a good a chance of guarding against the problem at international, non-electoral sites of decision-making as at national, electoral centers.

By some lights, indeed, the chance of protecting against this danger may be better in the international domain. Giandomenico Majone reports as follows on the extent to which regulators in this context may escape pressures that might lead their national counterparts astray. 'The comparative advantage of EC (and international) regulation lies in large measure in the relative insulation of supranational regulators from the political considerations and pressures which tend to dominate national policy-making. For example, the fact that the EC Commission regulates a large number of firms throughout the Community makes it less likely to be captured by a particular firm or industry than a national regulator'.<sup>27</sup>

We have been discussing contestatory forums where non-governmental organizations can operate in representing ordinary people. But the representative form of contestatory power does not have to be restricted to such forums. The European parliament offers an example of a legislative body where popularly elected representatives can exercise a role akin to that of minority, opposition parties in national contexts. Can that sort of body be replicated elsewhere? One interesting proposal in this connection would have a Second Assembly of the United Nations elected by people of the world.<sup>28</sup> Such a body might serve a contestatory function in relation to the General Assembly and the Security Council.<sup>29</sup>

So much for the reactive and representative powers of contestation. The third sort of measure that reinforces the contestatory power of ordinary people is the regulative variety. And here, as on the national scene, regulative measures can be made available to pre-empt

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<sup>27</sup> Majone, G. (1993). "The European Community Between Social Policy and Social Regulation." Journal of Common Market Studies 31., p.24. The argument put forward here is reminiscent of Madison's argument in Federalist 10 on the benefits of 'expanding the orbit' of government. See Madison, J., A. Hamilton, J.Jay. (1987). The Federalist Papers. Harmondsworth, Penguin.

<sup>28</sup> Held, D. (1995). Democracy and the Global Order: From the Modern State to Cosmopolitan Governance. Stanford, CA, Stanford University Press; Segall, J. (1990). "Building World Democracy through the UN." Medicine and War 6: 274-84.

<sup>29</sup> Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press, 607-08.

contestation and promote ends that would otherwise have given cause for contestatory action. As national governments can be constrained by constitutional checks, for example, so too the same is true of international institutions. And as national governments can be required to depoliticise various forms of assessment and decision-making, and to satisfy commitments to consultation, so the same also holds in the international forum. The details would take us too far afield but the general idea should be clear enough.

### Third claim

Some democrats may still remain somewhat reluctant to embrace international institutions, and so a last claim is also worth putting on the table. This is that even if international bodies do not display the full democratic form — even if they are subject only to the contestatory form of democratic control — still, they may enhance the substantive performance of democracy on the national scene and, in that way, may recommend themselves to democrats.

One way in which they may do this, of course, is by having the formal or informal power to restrain powerful countries or multinationals from imposing on smaller nations. But they may also help to enhance democracy on the national scene in another, less obvious manner.

The core feature of two-dimensional democracy, inherited from the ideal of mixed government to which I linked it, is the dispersion of power across different centers; in particular, the sort of dispersion that induces those centers to check and balance one another's influence and, ideally, to perform in more beneficial ways. The dispersion introduces separations of function like that between the executive, the legislative and the judicial; divisions within given functional areas such as that whereby legislation is made a bicameral business; and a balancing of the influences associated with different sectors.<sup>30</sup> The last claim I want to make is that by interacting with national centers of power, international bodies can intensify this dispersion of power and thereby lift the performance at those centers.

Up to the mid 1990's Tasmania refused to go along with the rest of Australia and remove certain forms of discrimination against homosexuals. Those in the State parliament and government appeared to have majority support for the line they took and were no doubt loathe to compromise their electoral standing by pushing reformist legislation. How was the problem resolved? By virtue of the fact that the federal government had signed up to a convention of the

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<sup>30</sup>Bellamy, R. (2002). *Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of the State, Democracy and Rights within the European Union*. *Sovereignty in Transition*. N.Walker. Oxford, Hart; Braithwaite, J. (1997). "On Speaking Softly and Carrying Big Sticks: Neglected Dimensions of a Republican Separation of Powers." *University of Toronto Law Journal* 47: 305-61; Pettit, P. (1997). *Republicanism: A Theory of Freedom and Government*. Oxford, Oxford University Press, Ch. 2.

United Nations that prohibited the sort of discrimination allowed in Tasmania. This being so, the federal authorities were able to appeal to a legal head of power — a treaty-making authority — under which they were entitled to overrule Tasmanian legislation. And that is what they did.

This case illustrates the fact that as international bodies come into interaction with national centers of power, they can check abuses by those national centers — in this case the Tasmanian parliament — and force them into a better level of democratic performance. Did the invocation of the United Nations convention represent an expatriation of national Australian sovereignty — or at least the restricted sovereignty enjoyed by Tasmania — as some alleged? Not on the two-dimensional understanding of democracy. The introduction of the international instrumentality served, rather, to bolster the editorial, contestatory aspect of Tasmanian democracy, preventing what must otherwise be seen as a form of majoritarian tyranny.

This example is not at all untypical, being paralleled by the many cases where the European Court of Justice has upheld citizen claims against national governments. The judgment of such a Court will not always be democratically the right one, as we might think. But the fact that there is a court to which citizens can appeal at this level, and a court that national governments have to keep an eye on, surely makes for an expansion of democratic space: an expansion in the possibilities of contestation open to ordinary people in their dealings with government.

But the democratic benefit of having international as well as national centers of power is not restricted to cases where national authorities are coerced by higher instrumentalities into behaving respectfully towards their citizens. The desire for esteem in international forums can have an important impact on how governments behave towards citizens.<sup>31</sup> Andrew Moravcsik draws attention to this possibility when he argues that the performance of national actors in the European Union has been lifted by exposure to the more demanding culture of esteem engaged by the international context. ‘The unique mechanisms of the European system, in particular its finely grained system of individual petition and supranational judicial review, function not by external sanctions and reciprocity, but by “shaming” and “co-opting” domestic law-makers, judges and citizens, who then pressure governments into compliance. The decisive causal links lie in civil society: international pressure works when it can work through free and influential public opinion and an independent judiciary.’<sup>32</sup>

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<sup>31</sup> Brennan, G. and P. Pettit (2004). *The Economy of Esteem: An Essay on Civil and Political Society*. Oxford, Oxford University Press.

<sup>32</sup> Moravcsik, A. (1995). "Explaining International Human Rights Regimes: Liberal Theory and Western Europe."

John Braithwaite and Peter Drahos are led by examples of the kind we have been discussing to speak of a paradox of sovereignty. ‘When national sovereignty and the sovereignty of elected parliaments are eroded, the sovereignty of ordinary citizens is sometimes enhanced’.<sup>33</sup> In our terms, the paradox is that when the electoral sovereignty of a national collective people has to face the extra checks provided by having international as well as national sites of contestation then that can improve the contestatory sovereignty of the separate, several individuals who constitute that people.

### Conclusion

Taken together, this triad of claims makes a reasonable case for not despairing of the future of democracy in an international, globalizing epoch. It is common nowadays to speak of a democratic deficit in decision-making at international centers of power. While there is a deficit there, for sure, it is not the irremediable deficit associated with unelected governance; rather it is a deficit that we can do something about: a contestatory deficit, if you will. Let the democratic ideal have a single, electoral aspect, and international institutions will cast a deep shadow over democratic prospects. Let it have two aspects, electoral and contestatory, and those institutions may not dim the prospects but actually make them brighter.<sup>34</sup>

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European Journal of International Relations 1: 157-89, p. 158. See too Gerstenberg, O. and C. F. Sabel (2002). Directly-Deliberative Polyarchy: An Institutional Ideal for Europe? Good Government in Europe's Integrated Market. C. Joerges and R. Dehousse. Oxford, Oxford University Press: 289-342.

<sup>33</sup> Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press, p. 34.

<sup>34</sup> My thanks for very useful comments received from participants in a seminar in the Law School, NYU, where an early version was presented in 2002. My special thanks to those who gave me written comments on the paper: Chuck Beitz, Richard Bellamy, Chris Eisbruber, John Ferejohn, Bruce Kuklick and Andy Moravcsik.