

Two-dimensional Democracy and the International Domain

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Drawing on a background in republican thought, I have argued elsewhere that democracy should be two-dimensional in character, allowing for an electoral and a contestatory aspect.¹ I argued in a normative spirit that the two-dimensional ideal is more defensible and more commanding than the more common, purely electoral alternative. This usage of the word 'democracy' also picks up some aspects of common talk. Few of us would happily apply the word to regimes, no matter how electorally unimpeachable, that failed to provide for certain forms of contestation, say through the presence of a viable opposition or an independent judiciary.

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 can be approximated in the international domain.

I should emphasise that I am no expert on the institutions of the international domain. My hope is, at best, to sketch a line that those who have a professional knowledge of the domain may find useful in considering the common complaint that international institutions inevitably erode democracy.

¹ 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.

1. The two-dimensional ideal

Two views of the role of democracy

Perhaps the most familiar conception of the role of democracy is that it serves as the means whereby a people as a whole asserts its collective will: its own will as distinct from the will of a dictator or an elite or a foreign power. On this conception, democracy is an ideal for a people that parallels the ideal of autonomy for an individual. The democratic people is an autonomous people: a people which gives laws to itself, rather than have them emanate from an alien or heteronomous source.

If democracy is understood in this way, then only those aspects of popular control will be relevant to democratic government that enable the people as a whole to assert itself. The primary means of collective self-assertion will be the plebiscite or referendum. The secondary will be the electoral choice of parliamentary representatives and an associated administration on the basis of their policy program, and the maintenance of electoral control by the requirement of seeking re-election, debating in parliament with opposition representatives, and dealing with public opinion.

But there is an alternative conception of the role of democracy, which also surfaces from time to time in popular and philosophical discussions. According to this conception, the people should control government democratically because that is the only mode of control under which those reasons can be expected to guide government that are recognized in common deliberation as the considerations relevant to determining public policy. This conception represents democracy, not as a regime for the expression of the collective will, but rather as a dispensation for the empowerment of public reason.

Let people debate public policy, as democratic electorates and parliaments routinely do, and certain considerations will inevitably emerge as those that

everyone countenances as relevant, that everyone expects everyone to countenance as relevant, that everyone expects everyone to expect everyone to countenance as relevant, and so on.² While people may not agree on the detailed weightings that such different considerations should carry, common reasons of the kind envisaged can support debate as to how various public issues should be discursively resolved or, failing a unique resolution, as to how it is fair that they should be non-discursively decided: say, by reference to majority voting among representatives, or by referral to a presumptively impartial umpire, or even by lot.

So far as that is so, the role of democracy may be cast as one of ensuring that government is conducted as common, deliberative reasons dictate, and as common reasons alone — at least in ultimate principle — dictate. I refer to such reasons as public reasons. They are public in two respects. First, in being reasons that determine how public issues should be resolved; and second, in being reasons that are endorsed by the public: that is, endorsed in common among members of the public.

In this paper, I assume that democracy should be conceived as a regime for empowering public reason or reasons rather than collective will. The paper can be seen as an exploration of where that conception would lead us in thinking about democratic institutions on the international, and indeed also on the national, scene.³

Two sorts of democratic mistake

² 'And so on' may be glossed to mean: and for any higher-order question in this sequence, people are disposed to form similar, confirmatory expectations.

³ 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.

If democracy is conceived as a system for empowering the public reasons recognized among a people, rather than the will of that people considered as a collective agent, then two dimensions of control are going to be relevant in the determination of policy. It is going to be important that public reasons rule, in the sense that the initiatives they support tend to be reliably identified and implemented; they are not overlooked. And it is going to be important that only public reasons rule, in the sense that whatever initiatives are adopted are justifiable by reasons that are commonly recognized as relevant in the public arena. They may be directly justifiable by reference to those reasons or they may be adopted under procedures that are justifiable in that way.

The first requirement, in an established phrase, is that institutions be designed so as to avoid false negatives: that is, failures to perceive options that public reasons would support. The second requirement is that institutions be designed so as to avoid false positives: that is, misperceptions or misrepresentations of what public reasons support; in particular, the misidentification of policies that are prompted only by factional or sectional interest as initiatives that public reasons support.

Electoral institutions are the obvious means whereby the first of these desiderata can be promoted. They will give the collective people plebiscitary power over policy, enabling them jointly to search out the various initiatives that public reasons might support. Or they will give them the power of choosing representatives who will compete in proposing initiatives — and so compete in the search for initiatives that public reasons might support — and who will be disciplined by considerations of re-election or public opinion or parliamentary challenge to stick to whatever programs the people endorse.

But how is the second desideratum to be promoted, with institutions guarding against false positives? False positives are likely to materialize under electoral institutions in one of two ways. Either in virtue of a tyranny of the

majority, as when a majority interest carries the day against what commonly endorsed reasons would support. Or in virtue of a tyranny of the elite, as when those who are insiders by dint of office or connection or wealth are able to hide what is going on in the corridors of power and to intrude their own interests into the determination of policy. If electoral institutions are the obvious means of guarding against false negatives in government, institutions that are broadly contestatory in character are the salient means of guarding against false positives. Those individuals or groupings who believe that power is not being exercised in the common interest — not being guided by public reasons — must be in a position to challenge a government decision, arguing with some prospect of success that it is not well supported by the public reasons operative in the community and should therefore be amended or rejected.

Two varieties of democratic control

The two dimensions of democratic control that I have in mind when I describe democracy as a two-dimensional ideal are associated, respectively, with electoral and contestatory institutions. I think of electoral institutions as enabling the people to play an authoring role in relation to public policy and of the contestatory institutions as enabling them to play an editorial role.

Electoral institutions enable the collective people to assert themselves as the author of government laws and decrees, challenging them and their would-be leaders or representatives to search out the policies that are likely to be supported by public reasons. Contestatory institutions enable the plural people — the people considered severally rather than collectively — to interrogate those collectively authored laws and decrees in the spirit of an editor; they look on the initiatives or proposals with an view to challenging elements that may infiltrate special interests, conscious of their ability to trigger an impartial, effective adjudication.

Electoral and contestatory institutions are authorial and editorial in character, precisely so far as they play the twin roles of guarding against false negatives and false positives. The people as author try to generate candidates for policies that would answer to public reason, out of an anxiety not to miss any; the people as editor seek to amend or reject suspect proposals out of a complementary anxiety that no ineligible candidates should get chosen. Exercising imagination in the attempt to identify the policies that have some claim to the support of public reasons, the people act as author of those proposals. Challenging and filtering out candidates that prove not actually to have that support, the people act as editor. The first exercise is one of generating sufficient candidates to guard against oversight, the second one of testing those candidates in order to make sure that they stand up to scrutiny.⁴

The authorial-editorial metaphor may be misleading in some detailed connotations but it has striking advantages. A first is that it highlights three forms of contestatory control. Consider the ways in which the editors of a newspaper will exercise control over would-be authors. First of all, they will inevitably have virtual control of every piece published, even if they do not causally intervene in the authorship; the fact that it was possible for them to intervene in the event of an article not passing muster means that they have to assume responsibility for it, equally with the author.⁵ Second, the editors will

⁴ Thus the authorial-editorial process is an instance of the generate-and-test heuristic that is found in many areas: for example, in the process whereby mutations are spontaneously generated in natural history and adaptations are selected under the testing effect of the environment. See Dennett, D. (1996). Kinds of Minds: Towards an Understanding of Consciousness. Weidenfel and Nicolson, London.

⁵ 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.

have inhibitory control of many pieces they publish, so far as the authors anticipate their reactions and self-censor in the attempt to secure smooth publication. And third, the editors may have interventional control so far as they take exception to a piece and reject it or amend it or enter into negotiation with the author as to how it should be revised.

These three forms of control are likely to be enjoyed by ordinary people so far as there are contestatory institutions available for them to make their voice heard. They will have virtual control over government laws and decrees even in the absence of any intervention, because the fact that they do not contest those decisions will be partly responsible for the shape the decisions assume. They will have inhibitory control over government so far as the authorities are wary of activating any protest or appeal against their actions. And of course they will have interventional control so far as they actually do contest decisions of government and have an effect upon them.

Not only does the metaphor point us in this way to three different aspects of contestatory control. A second advantage is that it suggests two modes in which the interventional variety of contestatory control may be implemented and the other varieties indirectly shaped. Real-life editors take familiar steps to ease the contestatory burden of reacting one-by-one to problems they find in the submissions of authors. Instead of relying on their ability to react in that way for ensuring implementation of a pattern they want, they also adopt proactive measures to reduce the reactive burden and promote the desired pattern. They will do this, for example, so far as they set out guidelines that authors should meet in their submissions or so far as they require authors to consult with them in advance if they have any doubts as to what line or style they should adopt.

It is clear, in parallel, that there is ample democratic room for proactive as well as reactive contestation. Proactive initiatives will involve putting in place constraints that are designed to reduce the burden of reactive contestation,

making it less likely that government behaves in a manner that people will want to question and change. They will introduce regulative arrangements that protect against those sorts of abuses that flout the demands of public reason and would reliably generate successful contestation. We shall be looking at some examples later.

A final advantage of the metaphor is that it does not lead us to expect an unrealistically clear-cut distinction between the implementation of the authorial and editorial functions. Real-life editors are quite likely to get involved in negotiating with their authors about amendments and to end up playing a role that makes them often look like co-authors. The same is likely to happen as various forums where contestations are raised become sources of proposals in the to-and-fro of negotiation with more properly authorial centres. This mixing of roles does not create any problems in deciding who is the newspaper editor, who the author of a submission to that editor. And neither should the parallel mixing in the polity blind us to the difference in rationale that lies behind the distinction between authorial and editorial, electoral and contestatory, powers.

In the remaining sections of this paper I go on to look at the implementation of the two-dimensional ideal of democracy, first in the national context, and then in the international. But before doing that, it will be useful to make some historical observations.

An historical comment

The two-dimensional reading of the democratic ideal has a long history. It goes back to the classical republican ideal of the mixed constitution, as that crystallised in Polybius's enthusiasms about republican Rome.⁶ In this picture, government was authorially carried forward by the monarchical element in the state — the consuls elected for a year — but was under the editorial, oppositional

⁶ Polybius (1954). The Histories. Cambridge, Mass, Harvard University Press.

control of the aristocratic senate and the plebeian tribunes; the senate had to be persuaded to give their support to the initiatives of consuls, the tribunes not to exercise their veto. This two-dimensional arrangement was justified on the grounds of being necessary to ensure the good of the republic: the rule, in our terms, of commonly recognized reasons.

The two-dimensional ideal surfaced in related ways within the later republican tradition. For example, it is present in Machiavelli's insistence that over and beyond the institutions stressed by Polybius, Cicero and others, the contentiousness of the people, with the contestatory discipline that this imposed on government, was of immense importance to the Roman republic.⁷ And equally it appears in Harrington's proposal that while a small, aristocratic senate should have the authorial power to propose governmental action, a more popular assembly should have the editorial power of accepting or rejecting those proposals.⁸

John Trenchard, a radical, eighteenth century commonwealthman, gave particularly forceful expression to the need for an editorial, contestatory dimension in democracy. 'Only the Checks put upon Magistrates make Nations free; and only the Want of such Checks makes them Slaves. They are Free, where their Magistrates are confined within certain Bounds set them by the People, and act by Rules prescribed them by the People: And they are Slaves, where their magistrates choose their own Rules, and follow their Lust and Humours'.⁹

⁷ See his Discourses on Livy in Machiavelli (1965). The Complete Work and Others. Durham, North Carolina, Duke University Press.

⁸ Harrington, J. (1992). The Commonwealth of Oceana and A System of Politics. Cambridge, Cambridge University Press.

⁹ Quoted in Reid, J. P. (1988). The Concept of Liberty in the Age of the American Revolution. Chicago, Chicago University Press, p.48.

If democratic republicanism emphasized the two dimensions of democracy, however, a rival tradition – I think of it as democratic absolutism – has tended to reduce the ideal of democracy to its purely electoral proportions, casting democracy as a matter of empowering the collective will. Absolutism began as a reaction to the republican ideal of a mixed and, so it was thought, weak government, stressing the need for a single sovereign who was legibus solutus – above the ordinary, statutory law; an absolute sovereign of that kind had a natural appeal in the period of the religious wars, as is evident in the work of Bodin and Hobbes.¹⁰ Absolutism became democratic as the notion of the sovereign people took over the role of the law-maker above the law. In this way of thinking popular sovereignty was taken to require electoral, sometimes participatory, measures but little of a contestatory kind; democracy became, quite simply, the ideal of a collective people which could impose its will in determination of its affairs.¹¹

In the republican tradition sovereignty had had a dual significance, referring on the one side to the authorial sovereignty of a people who sponsored what government did, and on the other to the editorial sovereignty of a people who were entitled to call government to book and even to resort to armed resistance.¹² In Locke's two legal metaphors, the first was the sovereignty of a people to whom the government was contracted, the second the sovereignty of a

¹⁰ Bodin, J. (1992). On Sovereignty. Cambridge, Cambridge University Press; Hobbes, T. (1968). Leviathan. Harmondsworth, Penguin Books.

¹¹ For a wonderful introduction to the emergence and use of the notion of the sovereign people in the period of the English revolution, see Morgan, E. S. (1988). Inventing the People: The Rise of Popular Sovereignty in England and America. New York, Norton, Part 1.

¹² Pasquino, P. (1996). "Popular sovereignty. What does it mean?" CREA, Ecole Polytechnique Mimeo.

people for whom the government was meant to act as trustee.¹³ In this vision sovereignty was broken up and did not have the absolute, inalienable cast that it was given by absolutists.¹⁴

Democratic republicanism and democratic absolutism have existed side by side in the tradition of democratic thought but absolutist ideas of democracy have tended to predominate. While arguing for the second-dimensional role of judicial review, for example, Christopher Eisgruber concedes that this goes against received ideas of what democracy is.

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.¹⁵

2. Democracy in a national context

¹³ Locke, J. (1965). Two Treatises of Government. New York, Mentor. See Finn, P. (1995). A Sovereign People, A Public Trust. Essays on Law and Government. Vol 1, Principles and Values. P. Finn. Sydney, The Law Book Company.

¹⁴ This line is nicely developed, with particular reference to the European Union, in Bellamy, R. (2002). Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of the State, Democracy and Rights within the European Union. in N Walker (ed) Sovereignty in Transition, Oxford: Hart; see too Bellamy, R. and D. Castiglione (2000). Democracy, Sovereignty and the Constitution of the Europe Union: The Republican Alternative to Liberalism. The European Union and its Order. Z. Bankowski and A. Scott: 170-90.

¹⁵ 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 dimension

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 dimension 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 would seem to be the main justification of representative arrangements available to democratic absolutists.¹⁶ But it is not clear that it can survive for long as a reason for preferring representation to 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 representative democracy?

The two-dimensional version of the democratic ideal can give a ready, principled answer. 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

¹⁶ On the variety of justifications for representation see Manin, B. (1997). The Principles of Representative Government. Cambridge, Cambridge University Press.

mentioned in support of this claim but I shall rely here on one simple, abstract line of argument.¹⁷

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 presumptive basis that they answer to public reasons: to considerations that are commonly recognized 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 whether the grounds for a decision qualify as public reasons, or questioning the support that they allegedly provide (Pettit 1997, Ch.6). But if the decisions of government are authorially controlled by popular referendum, then they are quite liable to display little or no rationality. That is not because ordinary folk are unlikely to be able to reason properly, or to be moved as reason requires. It stems rather from a structural feature about the aggregation of judgment. Even if individuals are completely rational in the votes they cast in a series of plebiscites, with each satisfying constraints of consistency and the like, it is entirely possible that the results of those referenda will constitute an irrational package.¹⁸

¹⁷ 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 Pettit, P. (2001). "Deliberative Democracy and the Case for Depoliticising Government." University of New South Wales Law Journal 24.

¹⁸ 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

Consider a toy example. Suppose that three people, A, B and C, have to determine their views as a group on each of three propositions, 'p', 'if p then q' and 'q'; suppose that they are each individually consistent in the judgments they make; and suppose 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 will cast their votes on the pattern involved in this matrix.

	p	if p, then q	q
A.	Yes	No	No
B.	No	Yes	No
C.	Yes	Yes	Yes

But if they do cast their votes on that pattern, then a majority will support 'p', a majority support 'if p then q' and yet a majority reject 'q'. And in that case the group as a whole will be committed to an inconsistent set of judgments: p; if p, then q; but not-q.

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 judgments. Indeed, it turns out to be logically impossible for a procedure to preserve 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

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.

issues are such that how they are resolved determines how others have to be resolved.¹⁹

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 continuall 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'.²⁰ Let the collective people have a plebiscitary kind of authorial power, then, and the editorial aspect of democratic control is bound to be

¹⁹ List, C. and P. Pettit (2002). "The Aggregation of Sets of Judgments: An Impossibility Result." Economics and Philosophy 18: 89-110. See too List, C. and P. Pettit (2002). "Aggregating Sets of Judgments: Two Impossibility Results Compared." Synthese.

²⁰ Morgan, E. S. (1988). Inventing the People: The Rise of Popular Sovereignty in England and America. New York, Norton, p. 61.

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.²¹

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 in the main through representatives; they should only occasionally be consulted in referenda, and then in ways that do not undermine representative control. Democracy must assume an indirect, representative form rather than a direct, plebiscitary shape. The resort to representative government may not guarantee rationality — a familiar, melancholy lesson — but it at least makes rationality more accessible.

There are a variety of procedures whereby a legislature can improve the prospect that its decisions satisfy the minimum criteria of rationality. In the Westminster system, for example, the prospect of rationality is furthered by the fact that 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 the prospect rationality is enhanced 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

²¹ 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.

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.²²

The editorial dimension

Three preconditions of editorial power

There are three 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 there has to be a reserve of reasons that are commonly recognized as relevant to the determination of public affairs. 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 of such public reasons available is more or less tantamount to assuming that a tradition of such discussion and deliberation has been established.

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

²² I am grateful for discussions on this point with John Ferejohn; we plan to write a joint paper on the topic. Notice the contrast between the arrangement described here and that envisaged in the previous footnote.

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.

The third precondition is that there are sufficient resources of trust across the different sectors of society for people to be able to agree on procedures whereby contestations can be heard and to have a high degree of confidence in their being upheld if they deserve to be upheld, rejected if they deserve to be rejected. A contestation will usually take the form of an argument that some law or decree is not well-supported by public reasons: by such reasons in general, or by the specific brief assigned to the decision-making agency on the basis of such reasons. There will have to be a high degree of confidence among different groups in the society that forums of adjudication are impartial sites for the testing of such arguments.²³ With popular protest, as distinct from formal contestation, this confidence will have to take a somewhat different form. What will need to be a matter of confidence is not that specific courts or tribunals or umpires are impartial but that public officials will resign from office, or resile from policy, so far as it becomes a matter of common belief that they did not make their decisions on appropriate grounds.

Assuming that there is access to a reserve of public reasons, a regime of transparency, and resources of relevant trust, 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

²³ Tom Tyler and his associates have assembled evidence that people will tend to be content with adjudication in such to the extent that they regard the process as impartial, not to the extent that they find the result congenial. See for example Tyler, T. R. and G. Mitchell (1994). "Legitimacy and the empowerment of discretionary legal authority: The United States Supreme Court and Abortion Rights." Duke Law Journal 43: 703-815.

individually, or in middle-sized groupings? There are two broadly distinct fronts on which the people may exercise editorial, contestatory power over government. These involve the reactive and proactive forms of contestation that we mentioned earlier.

Reactive contestation

The reactive form of contestation 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 individual people and groups of 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 and avoid triggering such responses.

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 movements of 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.²⁴ 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 movements of public opinion.

The rule of public opinion goes back to the origins of modern democracy.²⁵ It plays a role in guarding against false negatives on the part of an elected government, as it prompts the governors to recognize new initiatives that public reason supports.²⁶ But the important thing from our point of view now is that it can also guard against false positives, as movements in public opinion serve to warn government off initiatives that appear to be driven only by sectional interests.

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

²⁴ Ferguson, A. (1767). An Essay on the History of Civil Society. Edinburgh, Millar and Caddel (reprinted New York: Garland 1971), 167.

²⁵ Gunn, J. A. W. (1993). "Opinion in Eighteenth-Century Thought: What did the Concept Purport to Explain." Utilitas 5: 17-33.

²⁶ Oliver MacDonagh provides a nice example of its influence in his study of the emergence of the administrative state in Victorian Britain. 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 of publicized abuse, popular outrage and government response. 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. See MacDonagh, O. (1977). Early Victorian Government. London, Weidenfeld and Nicolson.

disobedience, or even practising open resistance. But the control will 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.²⁷

The forms of reactive control that we have been discussing — those involving the reaction of individuals in various appellate forums and the reaction associated with public opinion — are both direct, not representative. But people may also enjoy editorial, contestatory power in relation to a government so far as 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 representative democracy provides for the possibility of contestatory power, through ensuring that government can be rational and reason-bound. But representative arrangements serve to implement contestatory power as well as making it possible. The parliamentary opposition can serve to impose an electoral discipline, holding a government to its electorally endorsed policies. But it can also serve a contestatory function, being motivated to interrogate the doings of government for infidelity to public reasons — for the marks of purely sectional interest — 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

²⁷ 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.

measure and, so far as it is tied to the possibility of popular support, will boost the contestatory power of ordinary people.²⁸

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.

Proactive contestation

Regulative arrangements are necessary in order to promote fulfilment of the preconditions for a contestatory regime; in order to make possible various forms of reactive 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 in quite independent ways to assert, proactively, the editorial, contestatory power of ordinary people.

²⁸ 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.

The most obvious way in which they can do this is by putting in place sanctions against governmental behaviour that would certainly be contested in a reactive 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 part of individuals; and they may impose rule-of-law requirements on government action or require that laws are passed by two houses, or approved by an elected executive, or whatever.

But there are also other ways in which regulation may empower people in a contestatory manner. These 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 in an elected position.²⁹

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.³⁰ 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. And another is the

²⁹ 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.

³⁰ 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.

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.

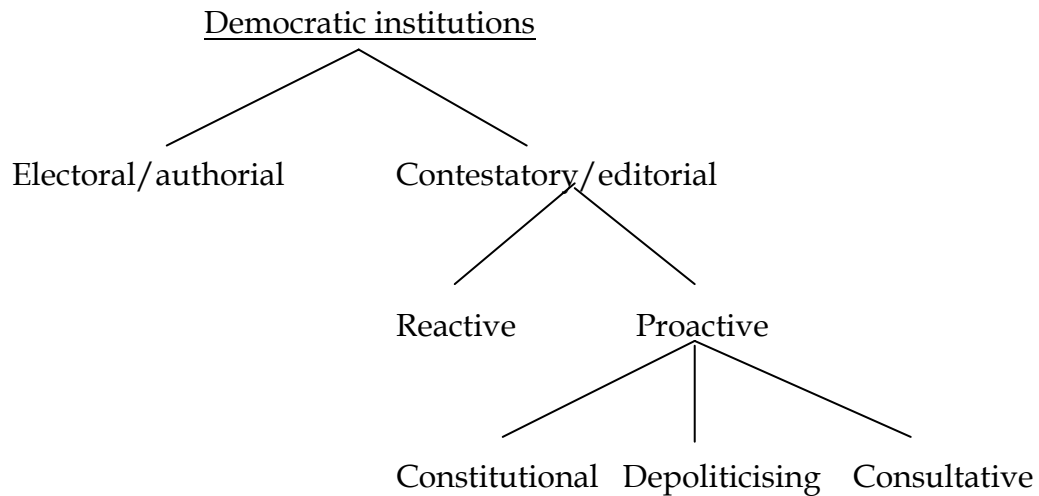
Apart from the constitutional and depoliticizing moves, another initiative whereby people's contestatory power can be regulatively asserted requires government to consult with the public, and perhaps with various named bodies, when drafting bills and considering decisions in different domains. Ex ante consultation is a variant means of securing ends that might otherwise have elicited ex post protest and appeal. While the forms in which government consults with people vary greatly, they often suffer from being vulnerable to the unbalanced influence of particular interest groups and lobbies. This problem, however, is not insuperable. It might be bypassed, for example, by resort to the sort of deliberative opinion poll that James Fishkin has been proposing.³¹ 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 help to guard against reasonable contestation.

Conclusion

Domestic democratic initiatives may be contestatory as well as electoral, then, with contestatory interventions being required to impose a degree of popular, editorial control on government. And contestatory initiatives come in various forms. They may be reactive or proactive in character. And if proactive, they may involve the imposition of any of a variety of patterns, among which we

³¹ Fishkin, J. S. (1997). The Voice of the People: Public Opinion and Democracy. New Haven, Conn., Yale University Press.

distinguish constitutional, depoliticizing and consultative constraints. The different possibilities can be marked in the following tree.



Before leaving this brief outline of institutions, however, one point is worth stressing. Under the two-dimensional ideal of democracy, as I conceive of it, nothing is fixed a priori on the question of what institutions should figure and how they should be connected with one another. The guiding principle of institutional design is that the arrangements adopted should promote the prospect of government being guided by public reasons and – in ultimate principle – guided by such reasons alone. But there is no presumption made as to exactly what design will best secure that result.

Thus, I have not said anything on whether there should be a written as distinct from an unwritten constitution; on what the exact scope of a constitution should be; or on whether there should be room for judicial review on the American model, for the sort of review associated with European constitutional courts, or for some other mode of policing the government's conformity to the constitution. All such questions are matters that can be resolved only in the light of empirical research and empirically informed modeling of constitutional arrangements. Nothing is a matter of sacred, democratic writ.

Sacred writ does not even run to the point of regulating for a clean distinction between authorial and editorial powers. While those two aspects of

democratic control are bound to be relevant in securing a rule of public reason, it may prove best to have institutions that are part authorial, for example, part editorial. And as things develop in the dynamic of democracy, the forums where contestations are heard and editorial powers exercised may come to have a greater and greater impact — and in that sense to look more decisive — than the forums of authorial power. Editors may end up collaborating with authors in the attempt to find a text that is acceptable on all sides and they may play a more influential role in this collaboration.

My purpose in reviewing national arrangements has been to illustrate the institutional richness of the democratic hurly burly, in particular the richness that is consequent on the fact that there are two dimensions of democratic control. The important point that the discussion should underscore is that democratic legitimacy does not attach only to elected bodies that give the collective people an authorial presence in making decisions. It can also attach to bodies that serve to enhance people's editorial, contestatory power.

3. Democracy in an international context

I tried in the first section to set out a picture under which democracy comes in two dimensions, authorial and editorial. Democracy is authorial so far as it gives the collective people direct or indirect control of government and is essentially electoral in character. Democracy is editorial so as it gives people in their plural identities the capacity to challenge decisions that are thought not to be well supported, and it is contestatory rather than electoral in nature..

In the last section I looked at how the two-dimensional ideal of democracy can be implemented in the national context. Authorial democracy has to be parliamentary rather than plebiscitary, I argued, on pain of undermining the possibility that people might also have an editorial, contestatory presence. And under a representative government people can have such a contestatory presence on a number of different fronts. Or at least this is so to the extent that there is

agreement on the reasons admissible in discussion of public affairs, government is conducted in a relatively transparent way, and there is a high degree of confidence in the possibility of contestations being fairly heard. Assuming those preconditions are fulfilled, the editorial power of the people may assume a reactive form in which they or their representatives are poised to contest decisions to which they object; or it may assume a proactive form, as when government is forced to conform to various patterns such as those imposed by constitutional, depoliticizing and consultative constraints.

We turn, finally, to the question as to what lessons this discussion carries for the consideration of democracy in the international domain. 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 the commissioners in the European Union and the officers in their cabinets; or the diplomats and bureaucrats at the United Nations; or the officials of the world-wide organizations that regulate finance, trade, drugs, travel, and the like;³² or the civil servants seconded to a variety of less formal, transgovernmental networks;³³ 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

³² For a good overview of these organizations see Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press.

³³ On such networks, see Slaughter, A.-M. (1997). "The Real New World Order." Foreign Affairs 76: 183-97.

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 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 such arrangements, the costs and penalties that unilateral defection would trigger become so enormous that it 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 — its ability to impose its collective will — or at least some aspects of that power.

If democracy is a purely electoral ideal, therefore, then democrats are bound to look with a cold eye at the growth of international institutions of government. But this conclusion need not be cause for despair. One reason is that the purely electoral ideal is really not very commanding. I shall not be arguing that point explicitly, though I did observe in the last section that the ideal would seem to support plebiscitary decision-making and to be unappealing on that account. Another reason for not despairing of unelected international powers,

however, is that they need not look so threatening under the alternative, two-dimensional picture of democracy. And I take that as my point of departure here.

How will international institutions look in the light of the richer, two-dimensional picture? I think they may seem democratically quite palatable and I want to present some arguments in defence of this claim. 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 every reason to be sanguine about the prospect of contestatory democracy being effective in this domain; and third, that in any case many of the international bodies envisaged should be welcomed by democrats, on the grounds that they enhance contestatory democracy on the national scene.

First claim

What are the pragmatic advantages of having a democracy on the national front that is electoral as well as contestatory? The main advantages under our story 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 establish policies and procedures that public reasons support;
- that by imposing the need for re-election, by establishing a parliamentary opposition, and by giving rise to a dispensation of public opinion, it disciplines representatives into sticking with electorally endorsed policy;
- that by doing this it will have the associated benefit of guarding against the danger of a dynasty getting established or a clique taking over; and
- that it lends itself to a complementary, contestatory regime under which government can be challenged for whether it breaches the requirements of public reasons, empowering purely sectional concerns.

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. The advantages mentioned are going to be generally capable of being 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 is virtually certain to be pursued, and to be reinforced by monitoring; the absence of electoral influences need not mean that initiatives supported by public reasons will be overlooked. The fact that the functionaries of international institutions are appointed for limited terms means that there is no particular risk of a dynasty or clique taking over. And the fact that the desire for re-election does not discipline those functionaries will not be a problem so far as other contestatory measures are available. This last proposition connects with the second of the three claims I want to make.

Second claim

That second claim is that there is ample scope for contestatory democracy in regard to international institutions and indeed that the prospects for achieving such democracy may occasionally be better on the international scene than on the national. The preconditions for contestatory democracy are that there is a reserve of considerations admitted on all sides as relevant in the resolution of issues; that there is a regime of transparency in place under which decision-making authorities are subject to unavoidable scrutiny; and that there is a process for adjudicating contestations that commands confidence on all sides.

These conditions are capable of being satisfied with any international institution that is not dominated by a particular country or group of countries. The national governments that set it up will presumably establish a brief for the institution, making clear what considerations will be relevant to its decision-making. They will be able to insist on the transparency of that decision-making.

And they will be able to shape the regime whereby contestations — their own contestations, perhaps, or those of their citizens — can be given an impartial hearing. National governments will be better positioned to ensure these results in relation to international bodies than are citizens in relation to national bodies; they will be relatively fewer in number, after all, and they will command relatively more powerful resources of persuasion.

Just as the preconditions for contestatory democracy can be reasonably well assured in the international domain, so there is every prospect that reactive and proactive disciplines can implement the power of ordinary people on this front. The reactive power of ordinary people will be directly ensured so far as there are channels of appeal available for individual or class or corporate action, channels that can be facilitated by national governments which wish 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, once again, by the interests of national governments in publicizing any signs that an international institution is not performing according to its brief.

As things currently stand with most international institutions, the representatives who can implement a sort of reactive power on people's behalf are their own national governments and the international, non-governmental organizations which crusade on particular issues like the environment, consumer rights, and so on. The incentives for national governments to be champions of citizen interests are manifest under a domestic democratic regime, in particular a regime where governments can be domestically called to account — in parliament, in the press, even perhaps before certain tribunals — for failures to represent the interests of their citizens against international powers.

What of the possibility of reactive representation by non-governmental organizations? The record of such bodies appears to be fairly good on this front.³⁴ 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 great 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 and finance for their survival and they are generally fairly open to the influences of their own unpaid memberships.

The representative form of reactive power does not have to be restricted to the forums where national governments and non-governmental organizations have standing. The European parliament offers an example of a formal body where representatives can exercise a role akin to that of minority, opposition parties in national contexts. Not only does the European Council of Ministers, representing national governments, have the right to reject proposals emanating from the unelected European Commission. So too does this popularly elected parliament. 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.³⁵ Such a body might serve a contestatory function in relation to the General Assembly and the Security Council.³⁶

³⁴ See Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press.

³⁵ 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.

³⁶ Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press, 607-08.

The second sort of measure that reinforces the contestatory power of ordinary people is the proactive variety. And here, as on the national scene, there is every reason why regulative measures might be available to pre-empt 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.

It is worth mentioning in this connection, indeed, that some commentators suggest that there is scope for more effective levels of constraint on the international scene. Thus, Giandomenico Majone reports as follows on the extent to which regulators at this level 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'.³⁷

Third claim

The two claims I have been defending are that the lack of authorial, electoral democracy in international bodies need not make for a serious problem

³⁷ 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.

and that there is every prospect for submitting those bodies to the editorial, contestatory power that is at least equally important under the two-dimensional ideal. But 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.³⁸ The last claim I want to make is that by interacting with national centers of power,

³⁸ Bellamy, R. (2002). *Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of the State, Democracy and Rights within the European Union*. University of Reading, Dept of Politics; 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.

international bodies can intensify this dispersion of power and thereby lift the performance at those centers.

An example may help to introduce the point. 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. I assume that by any reasonable lights this represented a failure in the contestatory aspect of democracy in Tasmania; the restrictions on homosexuals were bitterly contested, and with reason that are surely persuasive.

How was the problem resolved, and the contestatory power of Tasmanian homosexuals vindicated? By dint of the fact that the Australian federal government had signed up to a convention of the 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.

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, protecting homosexuals from a form of majoritarian tyranny.

This example is not at all untypical. It is paralleled by the many cases where the European Court of Human Rights has upheld citizen claims against

national governments. Or by cases where domestic courts have invoked European Union Law – often on the basis of seeking the advice of the European Court of Justice – to support citizen claims against their national governments.³⁹ The judgment of neither sort of Court will be guaranteed to be democratically the right one. But the fact that there are courts to which citizens can appeal at this level, and courts 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. Andrew Moravcsik draws attention to another possibility when he argues that the performance of national actors in the context of the European Convention on Human Rights has been lifted by exposure to the more demanding culture of esteem engaged on the international scene. ‘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 “coopting” 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.’⁴⁰

³⁹ See Weiler, J. H. H. (1999). The Constitution of Europe. Cambridge, Cambridge University Press, p.193. See too Slaughter, A.-M., A. S. Sweet, et al., Eds. (1998). The European Court and National Courts: Doctrine and Jurisprudence. Oxford, Hart Publishing.

⁴⁰ Moravcsik, A. (1995). "Explaining International Human Rights Regimes: Liberal Theory and Western Europe." European Journal of International Relations 1: 157-89, p. 158. For an explanation as to why governments might be willing to submit themselves to human rights regimes, see Moravcsik, A. (2000). "The Origins of Human Rights Regimes: Democratic Delegation in Postwar

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'.⁴¹ 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.

This completes the triad of claims that I wanted to defend in this final section. Taken together, I hope they make a reasonable case for some optimism about the fate of democracy in an international, globalizing epoch. While I do not think that existing institutional arrangements are democratically ideal — I do not think this of any national institutions either — I see no cause for outright despair: no ground for hand-wringing over the democratic deficit allegedly inherent in globalizing arrangements. Let the democratic ideal have a single, electoral dimension, and international institutions will certainly cast a shadow over democratic prospects. Let it have two dimensions, electoral and contestatory, and those institutions will not dim the prospects; they may even make them a little brighter.⁴²

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Europe." International Organization 54: 217-52.

⁴¹ Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press, p. 34.

⁴² My thanks to Richard Bellamy, John Braithwaite, Chris Eisgruber and Andy Moravcsik for much-needed comment.