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DEMOCRACY, ELECTORAL AND CONTESTATORY

PHILIP PETTIT

I have argued elsewhere that the ideal of democratization—the ideal of bringing government under the control of the governed—has two dimensions.¹ It represents both the familiar ideal of giving people electoral control over government and the usually unarticulated ideal of giving them contestatory control as well: giving them the sort of control that comes from the ability to contest government decisions effectively.

This essay approaches the two-dimensional conception of democracy from a new angle. I begin with some propositions about the normative role of democracy (section 1). I argue that democracy can play this role only so far as it operates in two distinct dimensions, electoral and contestatory (section 2). And then I try to show two things: first, that the institutions found in polities that we are happy to describe as democratic display those two dimensions (section 3); and, second, that the two-dimensional conception can help us in thinking about how those institutions might be reformed so as to serve democracy better (section 4). The first argument is an attempt to show that the two-dimensional conception is fairly true to established ways of conceiving of democracy; it does not represent a new-fangled idea. The second is a complementary attempt to show that nevertheless there is point to articulating that conception; it enables us

to take a critical view of actual democratic practice. The essay concludes with some general observations on the emerging conception of democracy (section 5).

In earlier work I made a case for a two-dimensional conception of democracy, and I looked at the likely shape of such a democracy, starting from the requirements of the distinctively republican ideal of freedom as nondomination. I make no republican assumptions in the current essay. The points that I argue are defended on relatively—though only relatively—ecumenical grounds.

I. THE NORMATIVE ROLE OF DEMOCRACY

Perhaps because it is inherently vague, the concept of democracy is easy to characterize. It is that of a system of government—a set of rules under which government is selected and operates—whereby the governed people enjoy control over the governing authorities. The concept is vague because it does not, in itself, tell us what kind of control, and how much control, the people ought to have over the authorities. Also it does not tell us anything about which are the controlled authorities and who belongs to the controlling people. Different conceptions of democracy offer specifications of such indeterminacies in the abstract concept; the two-dimensional conception to be outlined here provides one example of how that may be done.

Even with the points of indeterminacy unresolved, however, most of us will agree that democracy, or at least democracy as it ought to be, is a desirable system of government. Certainly we will agree that it scores decisively over familiar alternatives such as a dictatorship, or a one-party system, or a system run by professional elites. But if we think that democracy is superior to such alternative systems, then that is presumably because we think that it serves the role of a system of government better. Whatever other virtues we may see in democracy—and I say nothing here on those virtues—we would hardly favor democracy over alternatives, if we did not think that it serves that role better than those alternatives. So what, then, is the role that a system of government ought to play? What is the role that we think democracy can play better than alternatives?

In approaching this question, we might take our start from the various themes sounded in the extensive literature on democracy: that the democratic system gives voice to the will of the people; that it protects people best from government; that it ensures a sort of equality between citizens; and so on. I prefer to approach it afresh, however, working from four presumptions about government that fit fairly well with common thought, or at least with common thought in more or less egalitarian, secular cultures. These presumptions tell us in the broadest terms what brief we should expect government to discharge and they thereby direct us to a story about the normative role of a system of government, in particular a democratic system of government; the role of the system will be precisely to ensure that government discharges that brief.

Four Presumptions about Government

The presumptions I start from are these:

1. If government is desirable from the point of view of a given population, then members of that population must have certain interests in common; in the event that there are no common interests, there will be no desirable purpose for government to serve. More on common interests in a moment.
2. In most cases, common interests will be matters that people are capable of recognizing as common interests in the course of discussion and reflection. They will represent common, recognizable interests, as we can put it, not just common interests, period.
3. Government ought to be orientated toward the satisfaction of the common, recognizable interests of the people governed. It ought to do whatever it can to advance the common good, as it used to be put.
4. Not only ought government to be orientated toward the satisfaction of people's common, recognizable interests; those are the only factors that it ought to take its ultimate guidance from. Government ought to countenance no other master.

Common Interests

We turn to the discussion of those presumptions in a moment but, on the face of it, they are hard to resist. Or at least they are hard to resist, if we assume that the notion of common interests is well defined: that is, that there really are matters that deserve to be described in such terms. What then makes something a matter of common interest? How is the concept of common interest to be specified? In asking that question, I do not presuppose that we can come to theoretical agreement on a very specific list of common interests, or even on what might be described as a specific conception of common interests; I believe, as will become clear, that such a list and such a conception is just what we should want democratic practice itself to identify. All I presuppose is that there is an abstract specification or definition or concept of common interests on which we can agree.

Here, then, is the definition or concept that I favor. A certain good will represent a common interest of a population, I say, just so far as cooperatively avowable considerations support its collective provision. What are cooperatively avowable considerations? They are considerations such that were the population holding discussions about what it ought to cooperate in collectively providing, then they could not be dismissed as irrelevant. They are those considerations to which no participant in a cooperative scheme could deny relevance or weight under ordinary standards of conversational practice. They are not selfish or sectional considerations, for example, not considerations that some parties to the discussion would have to see as calls for special treatment and, in particular, as calls that they had no particular reason to heed.

This way of defining common interests is broadly contractualist in spirit; it owes much in particular to the interpretation of Rawlsian contractualism developed in the work of T. M. Scanlon and Brian Barry.³ It rejects the idea that common interests are to be defined as those private interests that happen to be shared by everyone in a community; as Robert Goodin argues, such a least-common-denominator definition would make common interests so elusive and unstable as to be of no normative significance.⁴ Without departing too far from our sense of what makes for a genuine in-

terest, and what makes for an interest's being really common—so at least, it seems to me—the definition offers us a firmer and potentially more useful way of thinking about common interests.

The concept is built on the basis of two assumptions, neither of which is particularly troublesome. First, that there really is a distinction between cooperatively avowable and cooperatively unavowable considerations. And second, that there is a fact of the matter as to what these support. The first assumption is borne out by the relative ease with which conversational practice polices the distinction between what in a given context are relevant reasons and what irrelevant. The second may seem to run afoul of the possibility that while cooperatively avowable considerations may offer support for certain initiatives, they are liable to offer equally strong support for rival sets of initiatives: typically, sets of initiatives that would benefit different groups differently. But this possibility need not be an insurmountable problem.

The reason is that in many situations there will always be a further cooperatively avowable consideration available: viz, that everyone is worse off not agreeing at all than agreeing on one or another of the rival schemes and that some measure ought to be adopted, therefore, to break the tie. The situations where people will take this view are those situations of compromise where no one feels that his or her position is wholly undermined by the failure to get his or her preferred solution. The measure adopted for resolving a stalemate in such a situation of compromise may be to toss a coin, for example; or to go to adjudication of some kind; or of course to put the issue to a majority vote in the electorate or parliament.

On the view to be developed here, democratic practice should serve to give a detailed specification of common interests in roughly the sense just defined. Indeed such practice may be required, as in the voting case, to break what would otherwise be stalemates and so to determine, not just discover, what will count in some cases as common interests. But it may be useful if, anticipating democratic practice, I say a little on what goods are likely to constitute common interests. This will help to generate a more vivid sense of the category of things I have in mind. And it may serve to motivate the definition I prefer, so far as the things envisaged do intuitively count as common interests.

The standard view of common interests, and it is supported by the contractualist approach taken here, directs us to procedural and institutional arrangements for solving familiar game-theory predicaments.⁵ The coordination predicament, where everyone prefers that all choose the same alternative—drive on the right or the left—and is otherwise indifferent between alternatives. Or the compromise predicament, where everyone prefers that all choose the same alternative—say, that all operate under certain rules of ownership and transfer—but among the different alternatives, they divide on which should be the option selected.⁶ Or the assurance predicament, where everyone prefers that all choose a certain alternative but no one wants to choose it in the absence of an assurance that others are going to do so too. Or the exchange predicament, where everyone prefers that all take a certain course rather than all doing anything else but where everyone prefers not to have to take that course himself or herself, each prefers to exploit or free ride on the efforts of others.⁷

Many such predicaments may lend themselves to spontaneous resolution in the course of social evolution.⁸ But where they are unresolved or not satisfactorily resolved, cooperatively avowable considerations will surely argue that collective action should be taken to provide a resolution. Thus those procedural and institutional arrangements that allow for the resolution of such predicaments are likely to count as common interests. And so of course are those substantive goods that are attained as a result of the resolution: external defense, internal harmony, and the like.

But common interests, on the definition adopted here, may also prove to require redistributive measures. Redistribution may be in the common interest because everyone wants to be protected against a certain sort of difficulty—say, medical or legal or financial—and only those currently in such difficulty benefit. Or it may be in the common interest because while everyone wants a certain sort of good—say, to be able fully to enjoy membership in his or her cultural group⁹—providing that good may require spending more resources on some persons than on others. Or it may be in the common interest because certain disadvantaged groups cannot be expected to cooperate without compensation for certain disadvantages that they suffer. The fact that a group has certain interests in common does not presuppose that mem-

bers already enjoy similar economic standing or identical cultural affiliations; it is wholly consistent with economic, social, and indeed ethnic diversity.¹⁰

Back to the Four Presumptions

So much by way of explaining the notion of common interests. The first presumption is that if it is desirable to have a certain population governed as a single group, then members must have certain interests in common: there must be certain things whose collective provision is supported by the sorts of consideration avowable in the spirit of cooperation. It may prove, of course, that few if any goods are matters of common interest for a given population; it may be that cooperatively avowable considerations generate a lot of ties, for example, and that divisions run so deep that no side is willing to compromise. In such a case it will not be desirable for that population to be subjected to a single government, though it may well be desirable for different groups to organize themselves around territorially distinct centers of government.

The second presumption registers that people are not merely centers where interests exist and can be satisfied. For any interests they have in common, people are generally capable of recognizing and endorsing those interests, if indeed they are not already aware of them.¹¹ They are not merely passive bearers of common interests; they are active, discursive creatures who are in principle capable of perceiving whatever interests they have in common.

The third and fourth presumptions draw fairly uncontentious moral lessons from the twin facts that if shared government is desirable, there will be common interests on the part of the people governed, and that the people served will be generally capable in such cases of recognizing and endorsing the common interests in question.

The third presumption draws the lesson that government should be orientated toward the satisfaction of people's common, recognizable interests. It holds out the satisfaction of such interests as a natural goal for government to pursue. We assume that government is in place. And we assume that there are common,

recognizable interests on the part of the population. What could be more natural, then, than to suggest that government should be orientated toward the satisfaction of such interests?

The fact that government is oriented toward the satisfaction of such interests need not mean, of course, that it takes entirely into its own hands the provision of the goods in question. It may be in some cases that the collective provision of those goods is best achieved by means of community rather than government action. And if that is so, then a government orientation toward the satisfaction of common, recognizable interests would presumably require it only to facilitate such community action, say, by protecting rights required for such action or even by providing resources that make it more effective.

The fourth presumption says that not only should a government be orientated toward the satisfaction of its people's common, recognizable interests, that is the only ultimate goal that it ought to embrace and pursue; it is the only factor that ought to be allowed to shape the formation and implementation of policy. This presumption is reasonable in light of the fact that whatever government does, it does on a coercive basis; at the least, it does it with the help of taxes levied on its people. That government should be restricted to the service of people's common, recognizable interests probably counts, indeed, as itself a matter of common, recognizable interest.

What is involved in restricting government to the service of people's common, recognizable interests? It means that government policy formation and policy implementation must be shaped only by factors such that it is in people's common interest that they play a shaping role. The forms of policy adopted or the modes of implementation favored may happen to advantage some over others. What is important, however, is that though they give advantage to some in this way, the forms and modes in question materialize under a pattern of policy making that is in the common interest of the community. Suppose that policy is made under the head of a common, recognizable interest in having basic scientific research conducted in the society. What is important in the forming and implementing of research policy is that decision making take place without regard to the sectional interests of this or that group, or the personal preferences of this

or that individual; it must take place, so far as possible, on the impersonal basis of what is best for the promotion of the research required.

This fourth presumption is not excessively restrictive. While it rules out the factional state that favors special groups, for example, it does not rule out the state that advances the interests of some without any cost to the interests of others; there may be a common interest in government's exploiting opportunities for such Pareto improvements. While it rules out the paternalistic state that pays no attention to whether people endorse the interests it tries to satisfy, it allows government to generate debate on whether such and such hitherto unrecognized interests should indeed be endorsed. And while it rules out the perfectionist state that tries to advance certain causes, irrespective of the recognizable interests of its population, the fact is that many such causes are likely to connect with its people's interests in a way that can readily be made salient.

The fourth presumption is not often articulated but it comes close to the surface in the principle ascribed to Benham by John Stuart Mill: "Everybody to count for one, nobody for more than one." The most striking effect of the presumption is to ensure that no one's interest should weigh more heavily than another's in determining what government does: no one should count for more than one. Were it the case that only common, recognizable interests had a controlling role in relation to government, after all, it would follow that government treated people as equals. Thus the presumption may be at the source of the many claims that democracy gives expression to the value of equality, awarding each voter the same political resources.¹²

The Role of a System of Government

We can summarize the upshot of our four presumptions in the thesis that government should advance all and only the common, recognizable interests of its people. And with that thesis in hand, we can return now to the question of what is the role of a system of government. What is the role such that we democrats must think that the democratic system of government—the democratic set of rules for how government should be selected and

operate—does or can play it better than alternatives like a dictatorship, a one-party regime, or a bureaucratic elitism?

The answer suggested by our presumptions is that the role of a governmental system is to constrain government—to guide it and to check it—so that it tracks all and only the common, recognizable interests of the governed. Those of us who are democrats will want to say, then, that a democracy—a set of rules that puts the selection and operation of government under the ultimate control of the governed—can serve better than alternatives to constrain government in this way. We will want to make against alternatives the sort of point that Tom Paine made about the rule of a single prince: "It means arbitrary power in an individual person; in the exercise of which, *himself*, and not the *res publica*, is the object."¹³

Given this vision of the role that a democratic system of government is supposed to play, and to play better than alternatives, the question arises as to how it can best hope to achieve this. We have taken democracy so far to be nothing more specific than a system of government under which those who are governed enjoy a certain control over those who govern them. We can now ask about what specific forms a democratic system should take if it is to discharge this task as well as possible. We shall be concerned with that question for the remainder of the paper.

II. THE TWO DIMENSIONS THAT DEMOCRACY NEEDS

Authoring and Editing

The normative role of democracy, as characterized in the previous section, has a dual aspect. First, democracy has to orient government to all the common, recognizable interests of its people. And, second, it has to orient it only to such common, recognizable interests; it has to neutralize the impact of other influences. The first requires, in positive mode, that democratic institutions make it possible to search out and authorize policies whose implementation promises to advance common, recognizable interests. The second requires, negatively, that equally democratic institutions make it possible to scrutinize the policies identified, and the other factors that influence how policies materialize, to

try to weed out those that do not answer to common, recognizable interests.

Democratic institutions must have a positive search-and-identify dimension, then, and a negative scrutinize-and-dissallow dimension. They must conform to what Daniel Dennett calls a generate-and-test heuristic.¹⁴ The search-and-authorize dimension—the generative mechanism—will help to ensure that all policies whose implementation might advance common, recognizable interests get a hearing. And the scrutinize-and-dissallow dimension—the testing mechanism—will help to ensure that only policies and modes of policy making that really answer to common, recognizable interests survive and have influence. The first dimension will guard against false negatives by allowing every possible common-interest policy into consideration. The second dimension will guard against false positives by subjecting the policies adopted and their mode of implementation to a rigorous testing and filtering procedure.

The two-dimensional structure envisaged has analogues in a variety of areas, most obviously in the area of natural evolution. Natural mutation ensures that in the course of evolution, many variant genes and organisms make their appearance. Natural selection ensures that only those that are adaptive—only those that promote the inclusive fitness of the gene—survive and spread. The two-dimensional structure required in the political case will have to operate on parallel lines. There will need to be an institutionalized means of guaranteeing a generous supply of candidates for consideration as common, recognizable interests of the sort that government ought to take into account. And there will have to be an institutionalized means of ensuring—or at least of raising the probability—that only those policies and those modes of implementing policies that do genuinely answer to common, recognizable interests survive to have influence in the corridors of power.

A second exemplar of the two-dimensional structure required in democratic institutions is provided by the way in which control is exercised over the text that appears in a newspaper or journal. The original text is actually provided by the respective authors of the pieces, be they journalists or outsiders who submit pieces for publication. But the text that finally appears is determined by the

hand of the editor or editors; they select from submissions and, with any piece accepted, they require abbreviated or otherwise amended versions. The authors determine all the candidates for publication that come the way of the newspaper or journal. But only the candidates that satisfy the editors ever get to be actually published.

By analogy with this case, what democratic institutions have to do is, first, to establish an authorial dimension of control—control by ordinary people—for searching out and generating a rich supply of presumptive common-interest policies; and second, to establish an editorial dimension of control—again, control by ordinary people—for rigorously scrutinizing and eliminating those candidate policies and those modes of policy implementation that do not advance common, recognizable interests. The lesson of the two-dimensional structure is that people will have to be able to determine both the general policies that government considers and the policies and modes of policy implementation that are allowed to shape the things that government finally does.

Can we be any more specific at this abstract stage about the institutions likely to be required by these two dimensions of democratic control? I think we can. The model of author and editor gives a particularly useful basis for considering the sorts of institutions that democracy is likely to require.

The Authorial Dimension

How are the people to be authors of those candidate common interests that get to be articulated in politics? Such an authorial role has to be implemented, clearly, by electoral institutions whereby policies and policy-making agencies are thoroughly discussed and are chosen from among a range of alternatives; in particular, from among a range of alternatives that anyone in principle can help to determine. It is only by recourse to electoral means that we can hope to ensure a generous supply of candidates for consideration as matters of common, recognizable interest.

But an electoral mandate will not identify the policies adopted and implemented as expressing, beyond all possible doubt, matters of common, recognizable interest; it will not ensure a thorough

scrutiny and editing of the policies that come to the surface, for elections operate on the basis of something less than unanimity and, notoriously, it is possible that an electorally backed policy will express only the common, recognizable interest of a majority or plurality of voters. And that problem apart, electoral control leaves those in government with a capacity, as they implement policy, to give influence to factors such that it is not in people's common, recognizable interest that they be effective.

This second problem is probably more serious than the first. The reason is that elections do have a mechanism for dealing with the first. In elections where parties compete with one another, the fact that a policy adopted by one party is actually inimical to the interests of some minority—if indeed it is a fact—gives rival parties a reason to draw attention to that fact and to lessen thereby the support that the offending party receives. Those parties may persuade some supporters who do not belong to the relevant majority to change their votes, they may shame majority supporters into changing their allegiance, or they may shame the party itself into changing its policy. But this mechanism is not as powerful as we might like, and of course it still leaves the second problem mentioned in play.

Even if electoral institutions offer a reliable means of producing a generous supply of candidates for matters of common interest, then—even if they reduce the risk of false negatives—still they do not incorporate a reliable means of ensuring that only matters of common, recognizable interest shape what happens in and at the hands of government. The authorial control that they would give ordinary people—and the limited editorial guarantee that they would provide—needs to be complemented by a fuller measure of editorial control.

The Editorial Dimension

How might such editorial control be implemented? The control in question cannot be exercised collectively, in the manner of electoral, authorial control; whatever problems arose in the first dimension will recur in the second. The editorial control that democracy requires—the control designed to ensure, ideally, that only matters of common, recognizable interest have an influence on

government—has got to be exercised by individuals or groups at a noncollective level.

How much can we say about the mode of noncollective, editorial control that democracy might incorporate? There are three points that can be registered, it seems to me, with a reasonable degree of confidence.

First Point: the Impossibility of a Veto System

The first point to be registered is that while editorial control must operate at noncollective levels, it cannot plausibly take the form of a veto. Not an individual veto. And not the group-level veto envisaged in some past arrangements: for example, in the veto that the tribunes of the plebs could exercise in republican Rome or in the veto given to the assembly of the people in James Harrington's republican vision of *Oceana*.¹⁵

The reason that no such veto can work is this. Matters of common, recognizable interest can often be advanced in different ways, where one way is more costly for this group, a second more costly for that, and where the different groups therefore will prefer different approaches. It may be a matter of common, recognizable interest that the tax system should be made more efficient, that a new power station should be constructed, or that various antipollution measures should be implemented. But any way of advancing such a cause is bound to hurt some more than others. There will always be a minority who are negatively affected by any improvement in the tax system, a minority who live in the vicinity of a new, much-needed power station, and a minority who depend for their livelihood on industries hard hit by important antipollution legislation.

If people had an individual power of veto then every such initiative could easily be stymied—certainly it would become more difficult to realize—as persons each tried to push the relative costs of the initiative elsewhere. And by parity of reasoning, many an initiative of this kind could become difficult to access if different groups within the society had a power of veto; where groups were differently affected, the worst hit would be likely to block the initiative in the hope of inducing others to bear the costs. There might be a pos-

sibility of resolving stalemates by bargaining, of course, but that can be no consolation in the present context, for bargaining would scarcely serve to guard against false positives.

Second Point: The Possibility of Contestation

The second point to be registered is that short of the veto, there is still an important power of challenge that might be invested in individuals or groups. This becomes salient by analogy with the power of challenge—challenge as distinct from veto—that some real-life editors enjoy. Take the sort of journal, or even newspaper, that is run on fairly cooperative lines: say, because it is actually owned by those who write for it and work on it. With such a publication, the editors may not be given the right to veto outright any piece authored by one of the writers. But clearly they can still exercise a great deal of editorial control. Instead of vetoing a piece they do not like, they can contest its publication before a meeting of the owners or before a meeting of a board appointed by the owners. They can argue that the journal or newspaper in question has such and such standards, or such and such a role, and that the piece in question does not fit. And they can expect to succeed in this sort of challenge whenever they make what is accepted as a good case.

Short of giving individual people or groups of people a power of veto over government, it might be possible to give them a power of contestation on parallel lines to the case just envisaged. All we have to assume is that where there are electorally supported policies or modes of policy implementation that do not promise to promote common, recognizable interests, then: first, this is capable of being established in debate and argument; second, it is possible to have bodies set up—perhaps under an electorally approved arrangement—that can be relied on to give a fair hearing and discussion to the different arguments and to pass compelling judgments; third, the judgments of such bodies can be given suitable authority in relation to the decision making of government; and fourth, it can be a matter of common belief in the society that this is the case, so that minorities need not be feared to distrust the bodies.

The element in these assumptions that is likely to be challenged is the claim made in the second, and presupposed in the fourth, that it is possible for certain bodies to be impartial on matters where the population is divided. It may be said that since the bodies imagined are likely to reflect the society as a whole, there is little reason to think that they will not divide on the same lines as the electorate or the elected representatives; thus they may be expected to support whatever the electors or representatives proposed.

But this objection supposes that members of such a body are bound to make a judgment dictated by whatever interest may be thought to have influenced electors and representatives. And that is clearly not so. They will be asked to judge on the factual issue of whether the policy as identified and implemented is supported by common, recognizable interests and only by such interests. For example, they may be asked to judge on whether the change to the tax system is dictated only by the common interest in making the system more efficient, and not in part by the interest of an effective coalition in pushing the relative costs of change onto a minority. The question will be the factual one as to whether the change proposed does indeed make a good claim to be in the common interest, so that the negative effect on the minority can be regarded as just an unhappy accident.

It requires a determined cynicism—and a cynicism that is apparently not shared in democratic electorates¹⁶—to believe that faced with deciding such a factual issue, any body that is representative of the society as a whole will divide on the same interest-bound lines that are taken to have divided electors or representatives. But even if we are cynical, there is an important reason that such a body should prove impartial, and should be generally expected to prove impartial. This is that in a society where divisions remain relatively civil, the members of such a body will stand to win the good opinion of most of their fellows only so far as they are seen to discharge their allotted brief. We may assume, as the established tradition has it, that people care a lot about the opinion that others have of them.¹⁷ And we may expect that it will be possible to organize relevant bodies in such a way that this desire for esteem will provide motivation enough for members to act impartially.

Third Point: Introducing Contestability

We have seen that while the editorial dimension of democratic control cannot require a veto, it may operate effectively under a regime where government decisions are always contestable. But the prospect of a contestatory regime may not be all that attractive; it may seem to hold out the specter of endless disputation and a chronic inability to get things done. The third point I want to make at this stage, however, should dissipate that specter. It is that there are ways of achieving the control that democratic contestability would give to ordinary people, short of allowing a society to get bogged down in never-ending contestations.

Consider the way in which things are likely to evolve with the editors of our imagined journal or newspaper. A regime of frequent contestation, involving regular challenges before the editorial board, would be very likely to prove both time-consuming and inefficient; many of the challenges would be of the same sort, for example, and would be routinely upheld. We can readily envisage steps being taken, then, to reduce the contestatory load. There are two steps, in particular, that spring to mind.

The first would be for the editors and editorial board to agree on the conclusiveness of certain grounds for challenge, on the need for submissions to be prepared for consideration according to certain guidelines, on the expectation that no contributor be in the pay of certain interests, and perhaps even on specific constraints that any published piece ought to meet, and to lay out these points of agreement in the form of procedures that writers can take for their guidance. The procedures might rule out the publication of any material of an offensive kind, for example; they might require that an advance outline of every submission be cleared in advance; they might stipulate that contributors should declare any personal interests in the matter on which they are writing; and the like. The promulgation of such a policy would involve the preemptive acceptance of certain contestations, in the sense that it would have the effect of removing certain submissions—or at least reducing the incidence of certain submissions—that would be contested, and successfully contested, by the editors. It would create procedural resources designed to facilitate the contestation that actually occurs.

The second step that the editors and editorial board might take in order to make a contestability regime effective would be to allow room for *ex ante* as well as *ex post* contestation. Instead of allowing only the contestation whereby the editors challenge a finished submission before the editorial board they might allow editors to have a say at an earlier stage by inviting authors to seek editorial input and advice whenever they are worried about the possibility of objection. They might introduce consultative as well as procedural resources in support of *ex post*, appellate contestation.

Not only would procedural and consultative resourcing reduce the need for appellate contestation by the editors. Such resourcing would also facilitate whatever contestation occurs at the appellate stage, for if the editors can argue that a given piece offends against clearly stated editorial procedures or that it breaches an agreement made in consultation with the authors, that will strengthen the contestatory case that they can make against it. Procedural and consultative measures should serve at once to reduce the need for, and enhance the effectiveness of, appellate contestation.

Moving back now to the political world, it should be obvious that there is room for giving people resources of contestation at three levels. It is possible to give people procedural and consultative resources as well as the appellate resources originally considered.

The consultative resources envisaged would require a recognition by those in government of the need to have input from various groups on its intended directions and initiatives, and an institutionalized means of eliciting such input and giving it a role in decision making. The procedural resources would come with the imposition of a variety of constraints on governmental decision making. As authors for our imagined publication are required to satisfy stated editorial policy, so governmental decision makers might be required to satisfy a variety of constitutional and other constraints. In particular, they might be required to satisfy constraints such that any breach of a constraint, even prior to its imposition, would have made a plausible case for contesting the offending decision or law.

Putting procedural and consultative resources in place ought to reduce the need for appellate contestation, as in the case of

the publication imagined. But, as in that analogous case, it ought also to improve the effectiveness of such appellate contestation as continues to occur, for if people can argue that government is in breach of a procedural constraint or if they can show that it is going against something agreed in consultation with one or another public group, then that ought to make an appeal against a government decision or law all the more effective.

One final remark. I mentioned above that electoral institutions may serve a secondary editorial role in guarding against some false positives—I gave the example of electoral competition and challenge—as well as their primary, authorial role in guarding against false negatives. I should also mention that the sorts of contestatory measures envisaged here may equally serve a secondary authorial role, as well as their primary, editorial brief. The processes of consultation, just to take one example, may obviously serve to draw attention to hitherto unperceived matters of common interest, as well as serving to test candidates already in place. For simplicity's sake, I will not comment further on the dual role of the two sorts of institutions but it should be recognized that I do simplify things when I suggest one-one linkages between electoral institutions and the authorial role and between nonelectoral institutions and the editorial function.

III. ABSTRACT REQUIREMENTS, ACTUAL INSTITUTIONS

How far do democratic institutions incorporate the two-dimensional structure that democracy ideally requires? How far do they have an authorial channel for raising the probability that all common, recognizable interests get a hearing and an editorial channel for making it likely that only such interests are influential? How far do they serve to guard against false negatives, on the one hand—that is, failures to recognize certain matters of common, recognizable interest—and false positives, on the other: failures to weed out factors other than matters of common, recognizable interest from the realm of policy making? Only if we have some sense of how actual institutions behave in this way can we gain a perspective on how they might be improved, if indeed improvement is feasible.

The Meaning of Democratic Institutions

Democratic institutions may be understood in a narrow or a broad sense. Narrowly construed, they are those institutions that are part of a system of democratic election. Broadly construed, they are all those institutions that we would expect to find in any regime worthy of being described as a democracy; they are institutions such that we would be loath to describe a country that did not have them as a democracy, or at least as a democracy in the established, Western sense of the term. These latter institutions will include democratic electoral institutions, of course, but they will also include institutions that provide for a rule of law, the independence of the courts, the impeachability of public officials, a free press, and so on. Most of us would balk at describing as democratic a country that gave no place to such measures, even if the authorities were elected in a more or less democratic way.

In asking how democratic institutions measure up to the abstract ideal of a two-dimensional democracy, I shall take these to comprise both electoral and nonelectoral institutions. I consider briefly how well democratic electoral institutions fit with our two-dimensional model, and then at some greater length how well democratic nonelectoral institutions do so.

The Role and Limitation of Electoral Institutions

The electoral procedures that we associate with real-world democracy allow for the periodic, popular election of certain authorities, at the least, the legislators. They ensure both that the periods between elections are not very long and that the elections are popular in the sense that all competent adults have electoral rights—they can stand for election and they can vote in elections—and are able to make their voting decisions without undue pressure.¹⁸ And in most cases they leave open the possibility that the very rules under which those in government are selected, as well as the rules under which they operate, can themselves be put to the electoral test: they can be amended by the elected politicians themselves or by the people in a referendum.

Under these electoral institutions, the governed people have an important authorial role in relation to political decision mak-

ing. They choose the personnel who will author the laws and decisions to be introduced by government or who, at the least, will supervise their authorship by bureaucratic officials. In this way they are the indirect authors of whatever policies those personnel put forward in office.

That the people are the indirect, electoral authors of such policies suggests in itself that the policies endorsed will generally be worth considering as candidates for matters of recognizable interest. It would certainly be surprising if none of the policies collectively authored by the people had a connection with common interests. But in any case democratic electoral institutions are designed in other respects to reinforce this effect and to make popular elections a plausible means of generating a rich supply of candidates for matters of common interest.

The reason, roughly, is this. Those who stand for political office will have an incentive to enhance their chances of election and reelection by promoting any cause that can attract general support. And any cause that answers to a common, recognizable interest will attract general support. Thus those who stand may be expected to be on the lookout for matters of common, recognizable interest that they can espouse. Most presumptively common-interest policies will be shared by all parties, of course, and will not surface much in electoral discussion. But the parties will have a keen interest in identifying any novel matters of common interest that can give them an electoral advantage over their competitors. And so there should be relatively little danger of politicians and people failing to detect various matters of common, recognizable interest. False negatives should not be a major problem.

These comments are, of necessity, rather brief and under-argued. The point is not to provide a detailed defense of democratic electoral institutions, as we know them. Rather, it is to show that under such institutions people are enabled, however imperfectly, to play the first, authoring role required by the two-dimensional ideal of democracy.

But if democracy encompassed nothing more than electoral institutions, then however well it did in generating a rich supply of candidates for matters of common interest—for avoiding false negatives—it would be ill equipped to guarantee the avoidance

of false positives. It might seem to guard against the adoption of policies for the furtherance of goods that do not answer in any way to the interests of the people or that do not answer to recognizable interests. But it would offer relatively inadequate protection against the adoption of policies that represent majority interests alone. And it would do little or nothing to guard against the influence of hostile factors in the specification and implementation of policy.

It takes only a majority, or even a plurality, of votes to be elected. And so there is a permanent possibility that this or that minority—stable or issue-based—will be overlooked in the electoral process. Electoral competition, as already noted, may be held to diminish this problem, as parties seek to criticize one another's policies. But this competitive factor is scarcely a substantive protection, particularly with the policies that the major parties share—these will constitute the bulk of their policies—and that do not come up for discussion at the time of elections.

Apart from this majoritarian worry, the second and more important problem, as we have already stressed, is that the people are only the indirect authors of the policies that are put up as candidates for matters of common interest. This means electoral control still allows governmental policy making to be influenced by factors such that it is not in the common, recognizable interest of people that they have an influence. Policies are specified in detail and implemented by the successful party or parties in government and, ultimately, by the public service that those in government try to oversee. Thus it is possible that in the specification and implementation of common-interest policies, for example, those in government will not be guided just by common interests. The implementation of policies may be designed to serve a particular electoral, bureaucratic, or just personal advantage. And policies that appear to represent common interests in the indeterminate rhetoric of an election may materialize in the fine print of legislation and regulation as policies that serve only the ends of this or that special-interest lobby.

This latter development is particularly possible, of course, if the elected government is in the debt of such a lobby for its support in the course of the electoral campaign or indeed for its support over the term of government. The organization or associa-

tion in question may be able to damage the government through adverse media publicity, for example, or through taking actions—say, closing down operations in electorally sensitive locations—that reflect badly on government.

Nonelectoral Institutions

The nonelectoral institutions associated with democracy can be represented as attempts to respond to this problem, putting in place measures designed to increase protection against false positives and to try to ensure that only the common interests of the people dictate what government does, both in policy formation and in policy implementation. We saw in the previous section that measures for guarding against false positives—measures for giving people noncollective, editorial control of government—amount to contestatory resources, and that they come in three broadly different categories: procedural, consultative, and appellate. Without stretching things unduly, we can see many of the nonelectoral institutions that are associated with democracy as providing contestatory resources in these categories. Of course, the institutions in question can often be seen in other guises too, but it will be useful for our purposes to present them as devices for testing policy formation and implementation, and so for giving people control on the editorial as well as the authorial front.

Procedural Resources

The procedural resources that democracies typically institute, to go to the first category, come in two broad kinds. On the one hand, there are procedural constraints on the content of government decisions, in particular laws. And on the other, there are procedural constraints on the process whereby decisions and laws get to be authorized.

The most important content-related constraint is embodied in the principle of limited government, as we might call it. This principle is not often spelled out in the documents of those regimes that we would be happy to describe as democratic, but it is almost always built clearly into the practice. It says, roughly, that there is a limit to the range of matters on which government

can rule. The strictest version is incorporated in the harm principle put forward in John Stuart Mill's essay "On Liberty," according to this, government is warranted in interfering in the lives of individuals only to prevent them from harming others.¹⁹ Less strict versions, all of them vague in the detail of what they require, prescribe that government ought to be restricted to dealing with issues that are, broadly, in the public domain and ought to respect the privacy of individuals.

But the principle of limited government, however understood, does not exhaust the content-related constraints that most democracies impose on those in power. Almost all democracies recognize, formally or otherwise, that no laws should be passed, no decisions taken, that offend against any of a variety of individual and group expectations. Those expectations may be encoded in a bill of rights or implied in a founding constitution. But equally they may just be registered informally as matters of convention such that a parliament that tried to remove them could expect widespread resistance. Thus they may be matters of common law, so long tested and tried that no parliament would contemplate setting them aside.²⁰ Or they may be matters subject to "ordini" as distinct from "leggi," in the language of Machiavelli;²¹ matters of custom or "ethos" as distinct from law or "nomos" in the even older, equally influential language of Polybius.²²

There are different versions of the protected expectations in different cultures, but they are most familiar to us in Western countries in the guise of the basic liberties and rights. For example, freedom of expression and association and movement; the right to dispose as one wishes—more or less—of those things that one owns under local property rules; and the right to a fair trial in the case of criminal impeachment. We would be loath to describe as a democracy any system that denied these sorts of claims to individual members.

So much for procedural constraints of a content-related kind that democracies generally impose on government. Other procedural constraints restrict the process rather than the content of governmental decision making. I have a number of familiar restrictions in mind, nothing very esoteric, and I list them here without detailed commentary.

1. Rule of law. The law-based decisions of government have got to be general and apply to everyone, including the legislators themselves; they must be promulgated and made known in advance to those to whom they apply; they should be intelligible, consistent, and not subject to constant change; and so on.²³
2. Separation of powers. The legislative, executive, and judicial functions should be sufficiently separate to guarantee at least two things: the independence, in most of their operations, of the courts; and the requirement that those in executive government have to get parliamentary approval—the approval of legislators—for the main initiatives they undertake.²⁴
3. Deliberative democracy. The decisions of those in government should always be backed by reasons, whether the decisions be judicial, executive, or legislative in character; and the validity and relevance of the reasons offered ought to be subject to parliamentary—and, inevitably, community—debate.²⁵
4. Bicameral approval. There ought to be two houses of parliament, distinct in the basis on which they are elected or in the mode of election to them; and the approval of each ought to be required in the course of most legislation, so that the different mix of interests represented by the two houses has each got to be satisfied.
5. Depoliticized decision making. Subject to the possibility of review in extreme cases, certain decisions are best left by elected governments to bodies and officers who are appointed on a statutory basis for a set period of time. These are decisions in which elected politicians are likely to have self-seeking interests, inimical to the public interest; they are best put at arm's length on the grounds that no one should be judge in his or her own case: *nemo iudex in sua causa*. Examples recognized in many jurisdictions include decisions on public prosecution; decisions on redrawing electoral boundaries; decisions on interest rates; and even decisions on certain planning issues.

6. Independent accountability. There should be provision for the auditing of government accounts by an independent authority, with the reports of that authority available for debate in parliament and community.
7. Freedom of information. Subject to a time embargo in certain sensitive areas, there ought to be provision for members of the public, including the press, to access documentary information on the data and arguments that carry weight in decisions by public bodies.²⁵

Without going into detail, it should be obvious that the procedural constraints just reviewed, whether content-related or process-related, are well understood as providing ordinary people with preemptive resources of contestation against government decisions. To the extent that government decisions are required to satisfy these constraints, they are less likely to reflect matters that are not truly of common interest. False positives should be a somewhat lesser problem than they might otherwise have been. So at any rate I assume.

Consultative Resources

Consultative opportunities have long been available, at least as a matter of formal right, in matters where government requires parliamentary support. Parliament can be petitioned by members of the public to act on a certain matter. Individual parliamentary representatives can be accessed by their constituents or by this or that lobby group. And parliamentary inquiries and committees can often be accessed in a more formal, often public manner. But much government is now conducted, whether we like it or not, in domains where parliamentary control is not available or parliamentary scrutiny is almost certain to be ineffective. Thus the traditional avenues of public access provide ordinary people with only very limited consultative resources.

The reason that government escapes effective parliamentary control and scrutiny is that, on pain of infeasibility, administrative decisions in contemporary democracies cannot all be implemented by means of regular legislation. They have to be taken under delegated or subordinate legislation that gets very little

parliamentary scrutiny. Or they have to be left to the discretion of the relevant agency or officer.

But most contemporary democracies have developed some means whereby the public, on an individual, organizational, or associational basis, are enabled to have an input into such legislatively underexamined decision making; and these measures are often applied to decision making more generally. Thus we find that provision is made, sometimes under a statutory, legislated requirement, for the establishment of advisory, community-based bodies that administrative agencies have to consult; for the setting up of public hearings and inquiries relevant to this or that proposed venture of government; for the publication of proposals—say, in “green” or “white” papers—and the eliciting of responses from members of the public; and for the conduct of focus-group research or research of a related kind into public opinion on issues where the government intends to take action.

These initiatives, together with the traditional modes of access to parliament, represent consultative resources that are of the first importance from the point of view of preventing government from succumbing to false positives. They give concrete form to the old injunction *audi alteram partem*²⁷—hear the other side—and they offer at least some prospect that government will be dissuaded from taking action in cases where the line proposed does not answer to common, recognizable interests; in particular, where it promises to treat a minority in a deleterious way.

Of course, as already noted, many government decisions, even decisions that are prompted by common, recognizable interests, will be relatively more damaging for one group than for others, and that group may be expected to protest at the consultative stage. But if its voice has been fully heard—and that may be tested in later appeals—then members of that group may feel some greater confidence that though they suffer more than others, that is just bad luck and not a result of their being treated as less than equals. They can agree that it is in the common, recognizable interest of members of the community that a power station of a certain sort be constructed, for example, and they may come to see that, though they are hurt by the decision, the best place to locate the power station is indeed in their own neighborhood.²⁸

Appellate Resources

In any regime that we would be happy to describe as a democracy, it goes without saying that citizens must be able to challenge officers of government in the courts on matters of private law, as it goes without saying that officers of government may be charged with offenses against the criminal law. Like ordinary citizens, government officials and bodies are capable in proper democracies of being sued for torts; breaches of contract, breaches of trust, and the like.

But democracies go much further than this in allowing ordinary citizens to challenge those in government. They allow citizens to appeal to parliament for an inquiry into the doings of government, whether the inquiry takes the form of a parliamentary question or a full-scale investigation by a parliamentary committee. That is implicit in arrangements already described. And, over and above that, they provide citizens with a capacity to challenge a government initiative on three more or less distinct counts: for its legality under public law; for its substantive merit; and for its general propriety.²⁹

To challenge government action for its legality under public law is to apply for the judicial review of the action in question.³⁰ The challenge may be brought under the head of a written constitution or international covenant, or on grounds that the action offended against natural justice, was not within the authority of the agent, was in some other way unreasonable, and so on. The remedy that the courts can offer in the case of a successful challenge is to quash the relevant decision of government, to order the government to perform appropriately, or to prohibit it from continuing on its current path.

The courts, in particular the high court or supreme court, are the forums in which people can challenge the government on grounds of legality. But in most democratic jurisdictions bodies of a different kind—they are often described as tribunals—provide people with the opportunity to challenge government on a different count, to do with the substantive merits of decisions taken rather than their strict legality. These tribunals are often specialized, with one tribunal dealing with land use, another with education, another with immigration, and so on. They are associated with the rise of administrative law over the past fifty years

and they differ from the courts in being able to substitute their own decisions for the decisions of government that are under challenge.

Not only may people in most democracies contest government initiatives for their legality and their merit, they may also bring challenges of "maladministration"—charges of neglect, inattention, delay, arbitrariness, and so on—of a kind that the courts and the tribunals won't always be able to hear. These are brought before those complaints officers, some specialized, some not, who are generally described as "ombudsmen." Ombudsman figures are able to investigate a complaint and publish a report and, while they do not have a power to enforce a remedy, they are often effective in securing compensation, and even a change of practice on the part of government agents.

These avenues of challenge represent, from our point of view, potentially important resources of contestation. They may not all work well; indeed, it may even be that some work for ill—say, the institution of judicial review—in being overcautious and overcautious of electoral and parliamentary choice.³¹ But they do represent an attempt to guard people against false positives, that is, to guard against those in government forming or implementing policies in a way that is not responsive just to the common, recognizable interests of their citizens. They are designed, however imperfectly, to protect people from the danger of government officials and bodies behaving in a corrupt or factional manner.

IV. DEMOCRATIC REFORM

At this point my essay would ideally provide a list of reforms that ought to be made in the institutions of democracy. But that is infeasible both for a shallow and a deep reason. The shallow reason is that it would take me too far afield. The deep reason is that institutional reform requires an input not just from the theoretical analysis of ideals and models but also from empirical investigation into how various ideals and models work in different situations.

Still, short of providing a manifesto for democratic reform, our discussion does provide a useful perspective on issues of

reform. It furnishes us with a picture of the role that democracy ought to play: that of empowering the common, recognizable interests of ordinary people, and nothing else besides. And it gives us a view of the rationale of existing democratic institutions, electoral and nonelectoral. They can be seen as serving to guard, however imperfectly, against two dangers: on the one hand, false negatives—the failure in certain cases to recognize genuine matters of common, recognizable interest—and on the other, false positives—the empowerment of factors other than common, recognizable interests in the realm of policy making.

With this perspective in place, it should be possible to conduct a proper review of the way democratic institutions work, looking at respects in which they are capable of being improved. It may be useful to illustrate the critical power of the perspective by considering six *prima facie* implications for some reforms.³² These are just *prima facie*, because the case for or against a given reform must always depend on empirical considerations that we do not have time here to rehearse. They do not include more or less obviously needed reforms, such as restrictions on the campaign finances of political parties. They are all of them at least mildly controversial and that, indeed, is one reason for choosing them.

The first three reforms canvassed bear on electoral institutions; the second three on nonelectoral.

1. No citizen-initiated referenda. The CIR is often hailed as a way of truly putting power in the hands of the people; it enables citizens, on getting enough signatures, to trigger a referendum. But from our point of view, the CIR has some obvious disadvantages. It facilitates voting on the basis of majority goals, passions, or ideals in a way that may allow of little or no contestation by minority groups; it invites the influence of moneyed interest groups that can spend lavishly in support of their favored line; it makes inconsistent public decisions possible, since the voting collectivity cannot be subjected to a discipline of intertemporal consistency; and it makes possible decisions that do not take account of empirical feasibility—that aim at the first-best and achieve only the third-best—since participants in a large-scale election are often expressive rather than pragmatic in the way they vote: they might well vote for banning brothels, for example, heedless of the consequences of driving prostitution underground.³³

2. Compulsory voting. Once it is accepted that the point of elections, at least in good part, is to generate policies that are candidates for being matters of common interest, it becomes obvious that if any section of the population is systematically excluded, then this point is less likely to be achieved. It will not matter that the exclusion is voluntary, as when a significant section of the people do not bother to turn out at elections, or even to register; that would make the exclusion tolerable only for those who think that the important thing is that people have equal political resources or opportunities. And so the line taken here would argue in favor of compulsory registration and compulsory attendance at the voting booth. Only such a measure would guarantee that politicians will put forward policies and personnel designed to appeal to all sections of the community, not just to those who are more likely to vote under a voluntary system.

3. Mixing electoral systems. If we adopt the perspective appearing here, then we need not worry about which voting system best serves to give voice to the people; we may even think that that is a silly, pseudometaphysical question. But what we must readily acknowledge is that if the electoral system works in part with one voting system, in part with another—say, if a majoritarian system applies for the lower house, a more proportional system for the upper³⁴—then that is all to the good. It means, on the face of it, that there is less chance that false positives, or the proponents of false positives, will be given electoral support. Whatever policies are endorsed, or personnel elected, they will have to prevail under different ways of reflecting the preferences of the people.

4. Depoliticizing more decision-making areas. There are some decisions currently in the hands of elected politicians that would be better put at arm's length, as decisions on matters like interest rates and electoral districting have been put at arm's length in many jurisdictions; otherwise they will be taken under pressures that do not answer to people's common, recognizable interests. Take decisions on sentencing levels for various criminal offenses. Any lowering of those levels, however beneficial overall—however well it serves people's common, accessible interests—will lead sooner or later to a heinous offense, as when someone commits a crime, for example, under new parole arrangements. Any

such offense will become a matter of media attention, public outrage, and a call on government to do something in response. And it will then be next to impossible for politicians not to respond by calling for a return to more severe, perhaps counterproductive, sentencing rules.³⁵ In a case like this, the cause of empowering only people's common interests, in particular their interest in crime reduction, may require that the day-to-day decision making be handed over to a body that is staffed by professionals and representatives of the community—subject to ultimate parliamentary control—and that makes its judgments away from the theater of politics.

5. Deliberative consultation. Consultation with communities often occurs on the basis of an invitation to those concerned to present their problems to government. But this skews consultation toward those who are immediately and distinctively enough affected—often negatively affected—to want to come forward. That in turn means that the opinions presented may not be representative; that government may feel free to treat those opinions seriously or not, depending on its independent wishes; and that those who are consulted by government are led to be cynical about consultation, they may be cynical about their power or their lack of power, depending on the case in question. The remedy would seem to be the introduction of something like the deliberative poll—or, more modestly, the citizens' jury³⁶—in which a random sample of the population are selected, brought together to discuss and be informed about different views on some set of issues, and then polled for final judgments.³⁷ This promises to give a picture of the predominant view—it is hoped that because of the discussion, not a sectarian view—that people in the community would form after due consideration.

6. Empowering community movements. At the consultative or appellate stage, it is very difficult for an individual to garner the information or marshal the expertise required to make a significant input. Indeed, the exercise may be jeopardized by free-rider effects, as the individual despairs of the prospect of having any personal impact on what happens. In this situation, the main hope of securing democratic ends—in particular, the main hope of ensuring that governmental policy formation and policy implementation are scrutinized for false positives—lies with the ex-

istence and activity of nongovernmental organizations: for example, an environment movement, a women's movement, a consumer movement, and so on. That being so, a democratic system ought to make provision for such movements to be able, depending on membership and the like, to claim public resourcing and to have standing in consultative and appellate forums.

I hope that these examples will show that even if the two-dimensional image of democracy is grounded in some common presumptions about how government should operate, and even if it is already reflected in the electoral and nonelectoral institutions of those countries we tend to see as democracies, still it has interesting implications for how democratic institutions should be reconceived and refashioned. Born in the old, the two-dimensional image can still give us a good way of thinking about the new.

V. THE EMERGING CONCEPTION OF DEMOCRACY

Not only does the two-dimensional conception of democracy make sense of why we associate certain institutions, electoral and nonelectoral, with democracy. And not only does it provide a critical perspective for assessing the performance of those institutions and for exploring reforms, it also has some distinctive features that are independently worth remarking.

The first is that the democratic ideal hailed in this paper—the ideal of government's tracking all and only the common interests of the people—is not a pure procedural ideal and not a perfect procedural ideal but, rather, an imperfect procedural one.³⁸ If we want to give two people an equal chance of getting a cake, then a pure procedure designed to secure that result would be to toss a fair coin; there is no criterion of their having an equal chance of getting the cake that is independent of such a procedure. If we want them to divide the cake equally—given the assumption that they are each interested only in getting as much as possible for themselves—a perfect procedure for securing that result would be to impose the "I cut, you choose" rule; there is an independent criterion of their each getting a half of the cake—we could weigh their pieces—but, idealizing somewhat, the "I cut, you choose" procedure is perfectly designed to achieve that result. By

contrast with such foolproof procedures for securing certain results, an imperfect procedure would differ from the pure one in supposing that we have a procedurally independent criterion or conception of the result to be achieved. And it would differ from the perfect one in failing to provide a guarantee of that result's being achieved: following it would at best increase the probability of obtaining the result. The example that Rawls gives of such a procedure is the criminal trial procedure for determining guilt.

The fact that common interests are defined independently of democratic institutions, electoral or contestatory, means that democratic procedure is not a pure procedure in relation to the goal of advancing all and only the common interests of the populace. And the fact that we can envisage democratic procedure's failing to advance that goal—the fact that we can always imagine invoking common interests to criticize what happens under such procedure—means that it is not a perfect procedure in relation to the goal. This, it seems to me, is all to the good. It means that we can never be silenced in criticism of democratic process—we can never be told that, by definition, whatever democratically happens is for the democratic best—and that, as citizens, we can continue to try to affect that process. Yet it does not point us toward any better way of determining what will advance all and only the common interests of ordinary people. Even if democratic procedure is an imperfect heuristic for identifying that target, it is manifestly the best procedure around. As we mentioned, indeed, it may even be an essential part of determining certain detailed matters of common interest, as when majority voting is used in situations of compromise to break what would otherwise be universally damaging stalemates.

The second point bears on the nature of this process. As envisaged here, it does not promise to deliver the common-interest ideal in the mechanical way that market process is held to deliver the ideal of competitive pricing. Market process is mechanical in the sense that those who are led by market pressures to price their goods at the competitive level may have no conception of what it is they are being led to do. Democratic process, as envisaged here, is not mechanical in that sense. Consider those who participate in the attempt to identify common-interest policies

or in the attempt to scrutinize candidate policies or modes of policy implementation, for how far they really are in the common interest. The picture developed here presents them as mostly involved, quite consciously, in seeking out matters of common interest. The process is dialogical or hermeneutic rather than mechanical.

The remaining observation that is worth making about the emerging conception is that it enables us to identify certain common modes of thinking as fallacious. A first fallacy it identifies is that of associating democracy exclusively with the rule of the collective people: the rule of the people en masse; in a word, people power. If the role of democracy is to empower all and only the common, recognizable interests of people, then a very bad way of pursuing that role will be to give over control of government to anything like unconstrained, majority rule. Polybius distinguished between "democratia" and "ochlocratia"³⁹—other ancient writers used the terms differently—and it is not fanciful to associate "democratia" in his usage with the rule of the people operating under constitutional procedures and "ochlocratia" with the rule of the people when majority feeling or opinion can automatically prevail, in the way that it does in a mob. Those thinkers who associate democracy exclusively with the rule of the collective people—certainly those who associate it with people power—might be said to mistake it for what can properly be described in English, according to the OED, as ochlocraty.

A second fallacy identified under the perspective that emerges here consists in associating democracy with active control, whether by the collective people or by any other body. Someone controls a result actively just in case he or she exercises choice in determining that the result comes about; someone controls a result passively just in case things are arranged—whether or not at his or her own devising—so that it will conform to how he or she prefers that it be: the preferences, if not the choices, are privileged.⁴⁰ From the point of view emerging here, it would be a mistake to think that democracy exists only so far as ordinary people actively control things, for in order to empower all and only the common, recognizable interests of people—particularly, in order to empower only those interests—we will have to have recourse to

procedural, consultative, and appellate measures that serve to give ordinary people passive rather than active control of what happens. If the measures work effectively, then they ensure not that ordinary people dictate what policies will be selected and applied but that the policies selected and applied will conform to people's common, recognizable interests.

It might be worth quoting, in this connection, the medieval adage to which many trace the core idea of democracy, even though it was an idea that took a long time to have democratic effects. *Quod omnes tangit ab omnibus tractari et approbari debet*. What touches all ought to be considered and approved by all. This does not say that what touches all ought to be decided by all, only that what touches all ought to elicit the considered approval of all.⁴¹ And that is to say that what touches all ought to be controlled by all in the passive mode of control, not necessarily in the active.

A third and final fallacy that the emerging perspective leads us to identify is that of thinking that democracy lives only in the oxygen of public debate and participation. The forums in which policy formation and implementation are effectively tested for false positives are not exclusively chambers of public debate in which the people or their representatives are sovereign. They include also the more or less professionalized forums in which consultations are offered and negotiated, and appeals of various kinds heard and judged. The fact that these spaces are not governed by public will, and often not opened to the public gaze, does not mean that they are hostile to democracy. On the contrary, they may be absolutely essential to the achievement of democratic aims: in particular, to ensuring that only matters of common, recognizable interest tend to prevail in government.

Democracy is not inherently a collective matter, then; it is not inherently a matter of active control; and it is not inherently the sort of system that confines decision making to sites that are available to public scrutiny and influence. Democracy does not mean the reign of the collective, active will of the public or its representatives. It is a system, rather, in which things are organized so that while the people collectively have enough electoral power to guard against false negatives, the people noncollectively enjoy enough contestatory power to guard against false positives.⁴²

NOTES

1. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), and "Republican Liberty, Contestatory Democracy," in Casiano Hacker-Cordon and Ian Shapiro, eds., *Democracy's Value* (Cambridge: Cambridge University Press, 1999). See also Ian Shapiro, "Three Ways to be a Democrat," *Political Theory* 22 (1994): 124-25, and "Elements of Democratic Justice," *Political Theory* 24 (1996): 579-619.
2. See too Jon Elster, "The Market and the Forum: Three Varieties of Political Theory," in J. Elster and A. Hillard, eds., *Foundations of Social Choice Theory* (Cambridge: Cambridge University Press, 1986), and Jürgen Habermas, *A Theory of Communicative Action*, vols. 1 and 2 (Cambridge: Polity Press, 1984, 1989).
3. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971); T. M. Scanlon, "Contractualism and Utilitarianism," in A. Sen and B. Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982); Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995); T. M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998).
4. Robert E. Goodin, "Institutionalizing the Public Interest: The Defense of Deadlock and Beyond," *American Political Science Review* 90 (1996): 331-43. For background on the idea of common interest, see Brian Barry, *Political Argument* (London: Routledge, 1965).
5. Russell Hardin, *Collective Action* (Baltimore: Johns Hopkins University Press, 1982).
6. Richard Bellamy, *Liberalism and Pluralism: Towards a Politics of Compromise* (London: Routledge, 1999), and Peter Vanderschraaf, "The Informal Game Theory in Hume's Account of Convention," *Economics and Philosophy* 14 (1998): 215-47.
7. Philip Pettit, "Free Riding and Foul Dealing," *Journal of Philosophy* 83 (1986): 361-79.
8. Brian Skyrms, *Evolution of the Social Contract* (Cambridge: Cambridge University Press, 1996).
9. Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
10. See Philip Pettit, "Minority Claims under Two Conceptions of Democracy," in D. Ivison, P. Patton, and W. Sanders, eds., *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, forthcoming). Imagine a society where all are agreed on certain substantive moral or religious tenets, and where cooperatively avowable considerations would seem to support the collective reinforcement of

certain customs, including customs that do badly by some of the parties to the cooperation, say, women, or those in a certain caste. Are these to be regarded as common interests? Yes, I would say so far as the tenets in question retain a hold on everyone. But of course the cooperatively allowable considerations that support the collective reinforcement of the customs are not robustly considerations of this kind; they will cease to be cooperatively allowable as soon as a single individual departs from the tenets in question. This being so, it is natural to think that among the common interests of a population, there is an important distinction between those that are robust common interests and those that are only fragile common interests. I make nothing further of the distinction in this essay, though it will clearly be of relevance in other debates.

11. Cass Sunstein, "Democracy and Shifting Preferences," in David Copp, Jean Hampton, and John E. Roemer, eds., *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), 196-230; John Ferejohn, "Must Preferences Be Respected in a Democracy?" in David Copp, Jean Hampton, and John E. Roemer, eds., *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), 231-41.
12. Ross Harrison, *Democracy* (London: Routledge, 1993), chapter 1; Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder: Westview Press, 1996), chap. 2.
13. Tom Paine, *Political Writings* (Cambridge: Cambridge University Press, 1989), 168.
14. Daniel Dennett, *Kinds of Minds: Towards an Understanding of Consciousness* (London: Weidenfeld and Nicolson, 1996).
15. James Harrington, *The Commonwealth of Oceana and A System of Politics*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1992).
16. Tom R. Tyler, R. J. Boeckmann, H. J. Smith, and Y. Y. Huo, *Social Justice in a Diverse Society* (Boulder: Westview Press, 1997), 83.
17. Arthur O. Lovejoy, *Reflections on Human Nature* (Baltimore: Johns Hopkins Press, 1961); Philip Pettit, "Virtus Normativa: A Rational Choice Perspective," *Ethics* 100 (1990): 725-55; Geoffrey Brennan and Philip Pettit, "Hands Invisible and Intangible," *Synthese* 94 (1993): 191-225; Richard H. McAdams, "The Origin, Development and Regulation of Norms," *Michigan Law Review* 96:2 (1997): 338-433.
18. Adam Przeworski, "A Minimalist Conception of Democracy: A Defense," in Casiano Hacker-Cordon and Ian Shapiro, eds., *Rethinking Democracy* (Cambridge: Cambridge University Press, forthcoming).
19. John Stuart Mill, *On Liberty*, ed. E. Rapaport (Indianapolis: Hackert, 1978); Joel Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1986), 1.

20. A. V. Dicey, *An Introduction to the Law of the Constitution*, 10th ed., ed. E. C. S. Wade (London: Macmillan, 1960), 198-201.
21. Machiavelli, *The Complete Work and Others* (Durham: Duke University Press, 1965), 241.
22. Polybius, *The Histories* (Cambridge: Harvard University Press, 1954), bk. 6, 47.
23. I. L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1971); C. I. Ten, "Constitutionalism and the Rule of Law," in R. E. Goodin and P. Pettit, eds., *A Companion to Contemporary Political Philosophy* (Cambridge, Mass.: Blackwell, 1993).
24. William B. Gwyn, *The Meaning of the Separation of Powers* (The Hague: Nijhoff, 1965); M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Oxford University Press, 1967).
25. Joshua Cohen, "Deliberation and Democratic Legitimacy," in A. Hamlin and P. Pettit, eds., *The Good Polity* (New York: Blackwell, 1989), 17-34; Cass R. Sunstein, *The Partial Constitution* (Cambridge: Harvard University Press, 1993); Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard University Press, 1996).
26. Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), 167-68.
27. Peter Cane, *An Introduction to Administrative Law*, 3d ed. (Oxford: Oxford University Press, 1996), 160; Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), 15-16.
28. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 198-200.
29. See for an overview, Cane, *An Introduction to Administrative Law*.
30. *Ibid.*, 8.
31. Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999); and T. D. Campbell, *The Legal Theory of Ethical Positivism* (Brookfield, Vt.: Dartmouth, 1996).
32. John Uhr, *Deliberative Democracy in Australia: The Changing Place of Parliament* (Cambridge: Cambridge University Press, 1998), chap. 9.
33. Geoffrey Brennan and Loren Lomasky, *Democracy and Decision: The Pure Theory of Electoral Preference* (Oxford: Oxford University Press, 1993).
34. Samuel Issacharoff, P. S. Karlan, and R. H. Pildes, *The Law of Democracy: Legal Structure of the Political Process* (Westbury, N.Y.: Foundation Press, 1998), chap. 11.
35. Philip Pettit, "Republican Theory and Criminal Punishment," *Vittoria* 9 (1997): 59-79.

36. J. E. Kendall Stewart and A. Coote, *Citizens' Juries* (London: Institute of Public Policy Research, 1994).
37. James S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1997).
38. My thanks to Thomas Pogge for raising this issue with me. See Brian Barry, *Political Argument* (London: Routledge, 1965), chap. 6; and Rawls, *A Theory of Justice*, 85–88.
39. Polybius, *The Histories*, bk. 6, 57.
40. Amartya Sen, "Liberty and Social Choice," *Journal of Philosophy* 80 (1983): 18–20; see also Harrison, *Democracy*, 4–5.
41. Mannin, *The Principles of Representative Government*, 87–88.
42. I received useful comments when the paper was presented at a seminar in the Research School of Social Sciences, Australian National University, and I was also helped by some separate comments from Geoffrey Brennan and Bob Goodin. I benefited further from a very searching but constructive discussion of the paper at the Center for Human Values in Princeton, and I owe substantive debts to the formal commentators, Connie Rosati, and to the many who offered comments during the session and afterwards; I hope they will see their influence. Finally, I am grateful for comments received when the paper was presented to the Department of Government at Harvard. The paper was finalized in the course of a semester as Visiting Professor in Philosophy at Columbia University, and I gladly express thanks for the home away from home that Columbia provides me as a regular visiting professor.

DEMOCRACY BEYOND THE NATION-STATE

PART II