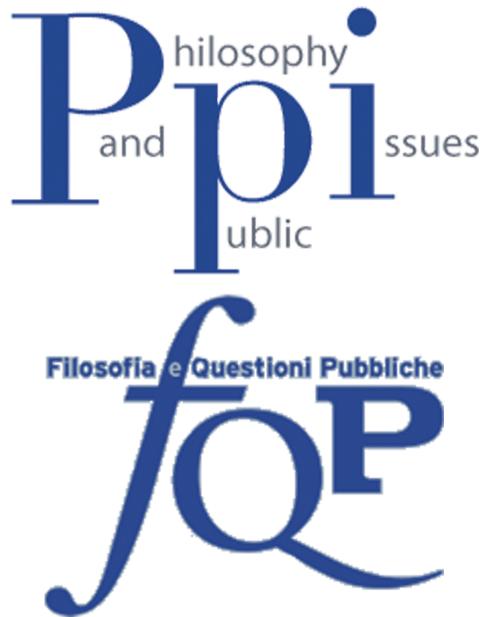


SYMPOSIUM
REPUBLICANISM BETWEEN JUSTICE AND DEMOCRACY



DEMOCRATIC CONTROL AND
CONTESTATION

BY

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Democratic Control and Contestation

Enrico Biale

In *On the People's Terms: A Republican Theory and Model of Democracy*,¹ Pettit not only develops a theory of freedom and government that will represent a benchmark for any Republican theory of justice and democracy but also, by defending the priority of democratic legitimacy over justice and grounding his account of democratic legitimacy in the contestatory power that is granted to citizens, establishes a framework for critical approaches that offer alternatives to liberal theories of justice and democracy.

Although both democracy and social justice are fundamental features of a republican theory of government, Pettit claims that justification of a democratic polity takes priority because “a failure in political legitimacy would compromise the robustness of freedom more deeply than a failure in social justice only. Where a lack of social justice alone would make us vulnerable only to our fellow citizens, a lack of political legitimacy would make us vulnerable” (24) to government and fellow citizens.

A legitimate democratic polity must not only ensure equal influence to its members but must also grant them control, namely an “individualised, unconditioned and efficacious

¹ Philip Pettit, *On the People's Terms. A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012). Unless specified otherwise, in-text references are to this book.

influence that pushes the state in a direction that they find acceptable” (239).

To pursue this aim, Pettit holds that citizens need to be granted political influence and contestatory power by complying with accountability requirements that define certain norms that orient public policy-making toward the common good. According to this perspective,² democratic legitimacy is grounded in citizens’ control that can be exercised through a contestatory power ensured to them by accountability requirements. What are the constraints that grant this model of control?

Pettit rightly distinguishes between bargaining³ (the acceptance game) and deliberative⁴ (the acceptability game) constraints by claiming that only the latter can ensure the contestatory framework that a republican polity requires.⁵ In fact, a bargaining process does not entail a critical evaluation of political proposals, unless this type of screening is useful for maximizing an individual’s chances to achieve what she wants.

² According to this dual model of control, Pettit claims, even when citizens do not always support proposals that are in the interest of all or trust their representatives to pursue this task, they unintentionally promote the common good by intentionally contesting and controlling political authority.

³ Howard Raiffa, *The Art and Science of Negotiation*, (Cambridge Ma: Harvard University Press, 1982); Howard Raiffa, *Negotiation Analysis*, (Cambridge Ma: Harvard University Press, 2002).

⁴ See Joshua Cohen, “Deliberation and Democratic Legitimacy,” in A. Hamlin and P. Pettit (eds.), *The Good Polity* (Oxford: Blackwell, 1989), pp. 17-34; Joshua Cohen, “Procedure and Substance in Deliberative Democracy,” in S. Benhabib (ed.), *Democracy and Difference* (Princeton: Princeton University Press, 1996), pp. 95-120.

⁵ For a clear contraposition between bargaining and deliberation see Jon Elster, “The Market and The Forum: Three Varieties of Political Theory,” in J. Bohman and W. Rehg (eds.), *Deliberative democracy: Essays on Reason and Politics* (Cambridge Ma: Mit Press, 1997), pp. 3-34.

Instead, deliberation embodies the idea of contestation by claiming that democratic institutions are legitimate when their decisions can be justified to those who are governed by them. Deliberative accountability ensures that people can challenge one another and their representatives if their claims are not grounded in acceptable reasons or if these claims are incoherent because they accept a value and then support a policy inconsistent with this value. Within such an argumentative decision-making process, citizens can effectively contest decisions and ensure that these decisions are in the interests of all by granting legitimacy to democratic procedures.

Although this account is in line with the deliberative ideal, there are important distinctions that particularly concern the role of dissensus that “always represents a second-best for deliberative democrats, whereas it is entirely acceptable, even desirable” (268) for Pettit.

If this conception of democratic control can ensure both critical reflexivity and respect for dissensus, Pettit’s version of republicanism could overcome the traditional objections addressed to the consensus-oriented structure of the deliberative ideal and establish a framework for those critical approaches that offer alternatives to liberal theories of justice and democracy.⁶

In my comment, I would like to challenge this idea by showing that although Pettit had the merit of acknowledging the importance of dissensus and contestation for a democratic polity, his account of democratic legitimacy is consensus-oriented and thus does leave much room for critical contestation.

To pursue this aim, I will focus on the role and content of dissensus and contestation for an account of democratic

⁶ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

legitimacy by considering procedural, deliberative and critical interpretations of the democratic decision-making process and showing that only the most radical conceptions can acknowledge dissensus and contestation as the proper grounds of democratic legitimacy.

Because a procedural conception of democratic legitimacy does not ensure any contestatory power to citizens, I will claim, in fact, that it acknowledges superficial but not critical dissent and systematically disadvantage the most marginalized citizens.

Although a deliberative account of democracy seems to overcome these shortfalls by empowering citizens and improving the quality of political decisions, I will contend that the epistemic structure of these accounts affects the role and content granted to contestation by simultaneously reducing the critical power that is ensured to citizens and undermining the legitimacy of democratic procedures.

To overcome these shortfalls, I hold that a shift of perspective is in order. Instead of developing models that reduce democracy to decision-making procedures, it is necessary to focus on processes of democratization that are concerned with the extension of the franchise, scope, and authenticity of control. Within this context, I will show that dissensus and contestation are not considered to be a mere feature of democratic polity or the outcome of an imperfect procedure; rather, they represent the proper expression of a deliberative rationality that legitimizes democracy by distinguishing it from any other form of government. Only this critical interpretation of democracy, I will conclude, can acknowledge dissensus and contestation as the proper grounds of democratic legitimacy.

My analysis will then focus on Pettit's account of democratic legitimacy and show that although the acceptability game shares

certain characteristics with this radical perspective, it is closer to the most traditional accounts of the deliberative ideal and their consensus-oriented structure, which underestimates dissensus and significantly constrains contestation by undermining the legitimacy of democratic procedures.

I

Dissensus and Contestation

In a pluralistic society, people disagree on which decisions should be taken by political institutions and on which values these decisions should be based. Democratic procedures address this type of disagreement by acknowledging individuals as being free and equal to ensure that any decision made by the majority is legitimate and everyone is abided to comply with it. However, it is very likely that although citizens comply with the outcomes of a legitimate decision-making process, they still consider these outcomes unjust or wrong. This type of dissensus is particularly problematic for a democracy because it shows that in a democratic polity, free and equal individuals are coerced into doing something that they consider wrong; simultaneously, it is also distinctive of a democracy because only in a context in which citizens are acknowledged as free and equal can dissent thus proliferate and lead to the contestation of legitimate decisions. Although dissensus and contestation are two constitutive and intertwined features of a democratic polity, they are not unanimously interpreted. In the following analysis, I would like to focus on some of these differences to elucidate the republican account of democracy developed by Pettit.

To acknowledge citizens as free and equal, procedural accounts of democracy claim that democratic procedures must ensure fair opportunities to influence decision-making processes to every member of the polity and must acknowledge that each claim is of equal worth. Within this context, citizens are free because they are bound only by the outcomes of democratic decision-making (thus, they are acknowledged as the only source of legitimacy for the norms that govern them), and they are equal because no one is excluded or finds his or her claim considered less worthy.

According to this perspective, democracy does not have to promote any substantive value because the common good can only be what equal citizens consider to be of public concern.⁷ As democratic fairness requires that all individuals must have the opportunity ‘to convince others that what in the past was not public in the sense of being a matter of common concern should now become so’⁸, no issues can be eliminated in advance, and citizens can ground their proposals in different values and provide different reasons, depending on the audience that they are trying to persuade.⁹

In cases of deep disagreements, citizens are required to create a framework for a minimal and ongoing compromise that

⁷ Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

⁸ Nancy Fraser, *Justice Interruptus* (New York: Routledge, 1997), p. 86

⁹ See André Bächtiger et al., “Disentangling Diversity in Deliberative Democracy: Competing Theories, Their Blind Spots and Complementarities,” *Journal of Political Philosophy* 18, 2010, pp. 32-63; Stephen Elstub, “The Third Generation of Deliberative Democracy,” *Political Studies Review* 8, 2010, pp. 291-307.

demands a willingness to continue to cooperate on equal terms.¹⁰ Provided that dissensus does not undermine political cooperation, citizens can legitimately consider those compromised solutions to be incorrect or unjust and deeply criticize them. Although these perspectives fully respect dissensus, I suggest that they do not properly constrain citizens' claims in the decision-making process. Therefore, an authentic contestatory power is not permitted to citizens and it is very unlikely that decisions will pursue the interests of all,¹¹ undermining the legitimacy of democratic procedures. Let me clarify these points.

Although these accounts do not reduce the decision-making process to an acceptance game, to adopt Pettit's terminology, and do not legitimize decisions that are deeply affected by the bargaining power of the participants in the decision-making process, citizens can accept policies for different—and even conflicting—reasons, do not thoroughly justify their claims (incompletely theorized agreement), or ground their proposals in persuasive but not fully justifiable arguments.¹²

¹⁰ See James Bohman and Henry Richardson. "Liberalism, Deliberative Democracy, and 'Reasons that All Can Accept,'" *Journal of Political Philosophy* 17 (2009), pp. 253-274.

¹¹ José Luis Martí, "The Epistemic Conception of Deliberative Democracy Defended. Reasons, Rightness and Equal Political," in Martí and Lafont (eds.) *Deliberative democracy and its discontents*, (Aldershot: Ashgate, 2006); David Estlund, *Democratic authority: a philosophical framework* (Princeton: Princeton University Press, 2009).

¹² Jane Mansbridge, J. Bohman, S. Chambers, D. Estlund, A. Follesdal, A. Fung, C. Lafont, B. Manin, and J.L. Martí, "The Place of Self Interest and the Role of Power in Deliberative Democracy," *Journal of Political Philosophy*, 18, 2010, pp. 64-100. Jane Mansbridge, "Conflict and Self-Interest in Deliberation," in S. Besson and J. L. Martí (eds.), *Deliberative democracy and its discontents* (Aldershot: Ashgate, 2006), pp. 107-32.

These lax requirements ensure continuous cooperation on equal terms, but they do not provide standards to which political authority is accountable and that require political authority to answer to the citizens. If, in fact, individuals could adopt different arguments for different audiences or accept a policy that is grounded in a value that they explicitly consider unacceptable, then it would be difficult to assess their claims on their merits or to understand whether they are accepting a policy sincerely out of respect for their fellow citizens or only strategically to maximize their benefits.

Consequently, it seems to me that these accounts of democratic polity acknowledge superficial but not critical dissent; that is, they do not grant citizens contestatory power and, as a consequence, they undermine both the legitimacy of democracy and the egalitarian structure on which this ideal is grounded. When political authority cannot be challenged, it is very likely that the status quo will not change and that those who are particularly disadvantaged by this context will not have the opportunity to improve their condition.

To conclude, even when these accounts appear to acknowledge citizens as free and equal and to be respectful of their dissenting opinions, they disadvantage the most marginalized citizens and undermine democratic legitimacy by failing to ensure contestatory power to individuals and misrecognizing their equal status.

To overcome these problems, traditional interpretations of the deliberative ideal claim that democracy embodies an idea of citizens as free and equal by acknowledging their authority to reciprocally demand justification for any decision that governs them. Public accountability does not simply require that anyone participating in the decision-making process advances a consideration that she judges to be reasonable; rather, she must

find considerations that her fellow citizens can reasonably be expected to acknowledge as reasonable (the universality condition). Because in an ideal deliberation “no force except that of the better argument is exercised”¹³, citizens should be ready to modify their preferences and claims when a better alternative is supported to ideally achieve a rationally motivated agreement on the best policy available.¹⁴ Although this perspective idealizes the decision-making process, it significantly empowers citizens, especially the least advantaged, by ensuring their contestatory power and increasing the chances that the decision-making process will promote the interests of all.

When the only power allowed in an argumentative setting is the force of the better argument, decision-making is impermeable to economic inequalities, relatively advantaging those individuals who typically have less political influence, and decisions are judged on their merits rather than their advocates.

This perspective assumes that political proposals can be assessed against some standards of political correctness that are independent of democratic procedures and individual preferences and that the legitimacy of decision-making depends, at least partially, on its ability to identify and promote decisions that are consistent with these standards (epistemic accuracy).

Even when it is undeniable that this conception of democracy empowers citizens and improves the quality of political decisions, I would like to contend that the epistemic structure of these accounts affects the role and content granted to contestation by simultaneously reducing the critical power that is granted to

¹³ Jürgen Habermas, *Legitimation Crisis* (London: Heinemann, 1976), p. 108.

¹⁴ Even if this consensus cannot be granted, citizens should be able to agree on a set of legitimate and reasonable alternatives, and the values on which these alternatives are grounded, from which to choose.

citizens and undermining the legitimacy of democratic procedures.

Although deliberative constraints ensure that citizens can challenge political authority, contestation is the proper expression of a deliberative process when it corrects an incoherence or mistake made by those who do not properly comply with deliberative requirements. However, when deliberative constraints are fulfilled, the ideal outcome should be consensus on the best policy without leaving any room for contestation. Obviously, it is acknowledged that an authentic democracy cannot achieve consensus on the best policy but only approximates this aim and that therefore citizens can criticize the decisions made. However, according to my view, this contestation is delegitimized because it is not the proper expression of a deliberative process legitimizing democracy but is instead a tolerated deviation from an ideal that cannot be achieved by imperfect procedures because of the limits imposed by reality.

I contend that the role and meaning that this interpretation of the deliberative ideal grants to contestation underline how an account of democracy that aims to identify shared values and policies instead of constantly criticizing and revising them delegitimizes dissent and cannot ensure the contestatory power on which democratic legitimacy should be grounded.

To conclude, the consensus-oriented interpretation of the deliberative ideal may improve the quality of political decisions and grant some contestatory power to citizens, but it justifies a problematic idea of democracy that is not compatible with a polity in which citizens are fully empowered and democratic legitimacy is grounded in their critical contestation.

To overcome the shortfalls of the traditional interpretations of the deliberative ideal, I hold, following critical approaches, that a

shift of perspective is in order. Instead of developing models that reduce democracy to decision-making procedures, it would be necessary to focus on processes of democratization that are concerned with the extension of the following: 1) franchise (the number of people capable of participating effectively in collective decision), 2) scope (issues and areas of life under democratic control), and 3) authenticity of control (the degree to which democratic control is engaged through communication that encourages reflection upon preferences without coercion)¹⁵.

According to this perspective, when everyone is included on an equal footing within the decision-making process but some individuals are subjected to domination in their working context or political issues are framed by perspectives that systematically underestimate their claims, equality is not granted and democratic legitimacy is undermined. Democracy embodies an idea of egalitarian society that goes beyond the political context and requires an acknowledgement of the impact of socially constructed values and practices both on the lives of citizens and on the decision-making process. Because these features are not given but developed in the social context, democratic control, to my view, must be extended to ensure that these values and practices do not marginalize and exclude anyone and that citizens are genuinely acknowledged as free and equal.

Within this context, dissensus and contestation are not considered to be merely features of democratic polity or the outcome of an imperfect procedure; rather, they represent the proper expression of a deliberative rationality that legitimizes democracy by distinguishing it from any other form of

¹⁵ John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000), p. 29.

government.¹⁶ Deliberation does not have to identify and promote a set of shared values or the best policies available, but it must ensure critical reflexivity by introducing new perspectives and ideas that can challenge the dominant discourse and reframe political debate.

Because the specific boundaries and content of democratic processes cannot be defined in advance but are among the issues under contention, a certain level of instability and dissent is not only inevitable but necessary. “Democratic debate is like a ball game where there is no umpire to definitively interpret the rules of the game and their application. Rather in the game of democracy the rules of the game no less than their interpretation and even the position of the umpire are essentially contestable”¹⁷.

According to this account of democracy, a polity in which citizens agree on some sets of shared values cannot ensure the extension of franchise, scope, and authenticity that characterizes a legitimate and egalitarian democratic regime. Only when those dominant discourses that appear to be shared by every member of society are systematically challenged can the critical evaluation and revision of values and ideals on which democratic legitimacy is grounded be ensured. Democracy is a legitimate and egalitarian system because it redefines its grounds, boundaries, and content by acknowledging that only citizens can specify the aims that the socio-economic system must pursue, the values on which their society must be grounded, and the background against which they must develop their life plans.

According to this perspective, disagreement is not only the starting point of democratic decision-making but also it

¹⁶ See Seyla Benhabib, “Deliberative Rationality and Models of Democratic Legitimacy,” *Constellations* 1 (1994), pp. 26-52.

¹⁷ *Ibid.*, pp. 38-9.

represents one expression of democratic ideals because only when citizens disagree and express their dissent do they properly exercise political agency. Dissent and contestation do not necessarily have any impact on the quality of decisions, but they address the quality of the process that will produce these decisions, the values and claims on which these decisions must be grounded, and the individuals who are allowed to make these decisions.

To conclude, I claim that full contestatory power can be granted to citizens and that democratic legitimacy is thereby fully justified when dissensus is neither respected nor considered as second best but is instead pursued by a democratic polity that aims to revise and challenge values and policies rather than reaching agreement on them. Once the different roles that alternative interpretations of democracy grant to dissensus and contestation have been clarified, I focus on analyzing which role and function Pettit's account grants to these important features of democracy.

II

The Acceptability Game and Contestation

Because dissensus and contestation are the proper expression of the democratic control that legitimizes democracy by distinguishing it from any other form of government, the acceptability game should ensure the critical reflexivity that characterizes the most radical interpretations of the deliberative ideal. Along these lines, Pettit claims in a previous work that his version of republicanism could establish a framework for those

critical approaches that offer alternatives to liberal theories of justice and democracy.¹⁸

Similar to Pettit's republicanism, these critical perspectives justify an egalitarian society in which citizens do not have to submit to arbitrary power in a political context or in any sphere in which power can be exercised and acknowledge the priority of the political dimension. Although critical perspectives explicitly hold that this priority entails that democratic control should be extended to new issues and areas of life, Pettit does not clearly specify, according to my view, the scope of democratic accountability. Thus, it would be interesting to understand whether Pettit agrees with these radical perspectives and claims that democracy should not be limited to decision-making procedures that aim at collective decisions but instead should be interpreted as a process of democratization that involves every relation that is characterized by power and domination.

To be fair, although Pettit holds that contestatory power should not only be exercised within those deliberative moments in which citizens/representatives must make political decisions but that it also must characterize the entire democratic process (i.e., before, during and after a decision is made), he appears to interpret democracy as a collective decision-making procedure. Finally, even when he recognizes that the political sphere has priority over other domains, this recognition does not appear to entail an extended scope of democratic control but simply an acknowledgement that a dominated decision-making will be worse than an unfair distribution of opportunities. However, if this were the case, then Pettit appears to assume a traditional interpretation of democracy according to which democratic control should be exercised over those cases that strictly concern

¹⁸ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

the political domain and are mediated through law. Although I am sympathetic to this view, it seems to me that this perspective is not consistent with the idea of granting a framework for critical approaches that provide an alternative to liberal conceptions of justice and democracy.

To confirm my doubts regarding the compatibility between the acceptability game and critical interpretations of the deliberative ideal, I would like to underline that “the considerations that an acceptability game is likely to valorise this way will fall into two broad categories” (Pettit 256): considerations of convergent interests, such as the benefits that derive from equality, cohesion, prosperity or peace, and considerations of concordant interests, such as compensation from a previous injustice suffered by a disadvantaged group or a Paretian improvement that helps some while not doing any harm to others.

By focusing on the quality of the outcomes of an acceptability game, although it is not clearly stated, Pettit seems to assume some standards of political correctness that are independent of democratic procedures and individual preferences, against which political proposals should be assessed and that collective decisions should promote. However, if this is the case, then democratic legitimacy will not exclusively depend on democratic control, but it will depend, at least partially, upon the capacity of democratic procedures to make the most correct decisions (epistemic accuracy).

As previously shown, this idea of democracy would justify a corrective rather than a critical account of dissent and ideally would aim for consensus on the best outcome. Even if it were acknowledged that actual procedures could simply approximate this result and that dissensus would consequently be justified, this type of contestation is not considered to be the proper expression

of democratic control or critical reflexivity. These features confirm, I contend, that the acceptability game is not compatible with those critical interpretations of the deliberative ideal that ground democratic legitimacy in citizens' contestatory power.

To conclude, Pettit either grounds democratic legitimacy in democratic contestation but interprets democracy as a process of democratization that does not aim to identify correct and shared policies, or he interprets democracy as a decision-making procedure that promotes correct policies but then grounds democratic legitimacy in epistemic accuracy and does not consider dissent the proper expression of democratic agency.

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If you need to cite this article, please use the following format:

Biale, Enrico, "Democratic Control and Contestation," *Philosophy and Public Issues (New Series)*, Vol. 5, No. 2 (2015), 9-24, edited by S. Maffettone, G. Pellegrino and M. Bocchiola