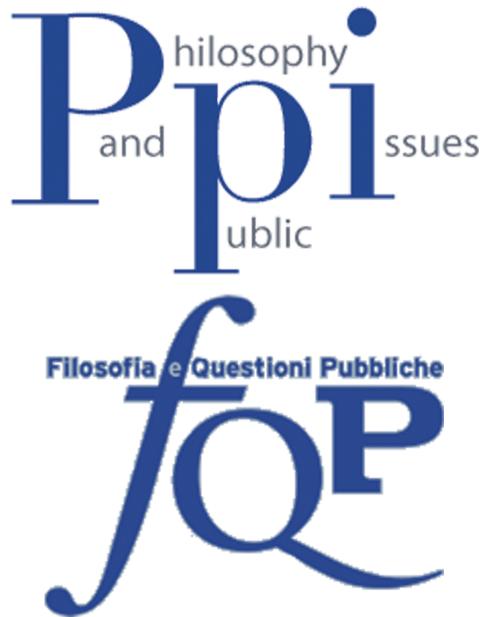


SYMPOSIUM
REPUBLICANISM BETWEEN JUSTICE AND DEMOCRACY



ON THE PEOPLE'S TERMS
A REPLY TO FOUR CRITIQUES
BY
PHILIP PETTIT

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On the People's Terms
A Reply to Four Critiques

Philip Pettit

It is a great pleasure to be able to consider these four critiques of my book. They are all deep and engaging and I have learned much from each. In the following comments I try to keep my end up in the debate, as the rules of exchange require. But further reflection may well drive me to make further concessions in response to these fine challenges.

I

Reply to Enrico Biale

Enrico Biale and I agree on the theory of democracy, as I describe it in the book. According to this theory, democracy should reduce the possibility of citizens being dominated by the power of political authorities. It should facilitate the equally shared control of the members of a society over the policies implemented and imposed by law. There is an issue raised for any such account as to who should count as citizens or members, as indeed he registers in his passing comments on franchise. But we may set that aside, identifying them, roughly, with the adult, able-minded, more or less permanent residents of the relevant territory.

But it is one thing to have a theory of democracy—a theory of the role that democracy should play in relation to a people and their government; it is quite another to have a model of

institutions that may be expected to realize that role. Biale focuses on the model that I offer in the later chapters of the book for how democracy might be realized. He is particularly interested in the claim that the model would give people a power of contestation in response to government policies, not just a power of authorization: not just a power of selecting those policies directly in referendums or indirectly via elected representatives. He asks whether the republican approach, as I outline it, does significantly better than various deliberative democratic models in making room for a form of contestation and dissensus that is critical, as he puts it, rather than merely corrective.

Biale holds that deliberative democracy is targeted on the ideal of consensus, in particular on consensus built around values that ought to have a universal appeal to reasonable persons, and that it inevitably sees dissensus as indicative of failure: this may be a failure on the part of the dissenting to recognize the values that appeal to others or a failure on the part of those others to accommodate the insights of dissenters. He thinks that this downgrades the role that dissensus and contestation ought to play in democratic life and he commends me for recognizing this in my book. But he suggests, although somewhat tentatively, that I do not live up to this self-advertisement and that in the end my own ‘account of democratic legitimacy is consensus-oriented’ as well—that it does not leave ‘room for critical contestation’ (11).

Much of his paper is a critique of deliberative democracy. He takes this as a decision-making procedure that gives each an equal say in deliberating about policies and that has an epistemic orientation, aiming at identifying ‘correct and shared policies’ (24). The goal, in Habermas’s phrase, is to ensure that no force is recognized other than the power of the better argument. Biale suggests that this approach downgrades the role of dissensus and contestation in supporting a search for ‘shared values and

policies’ and in not recognizing the importance of people’s ‘constantly criticizing and revising them’ (18).

Biale gestures at two grounds for criticizing the way in which deliberative democracy casts dissensus and contestation. First, it suggests that the primary goal in democracy is to identify a correct set of policies, so that dissensus and contestation only have significance as indicators of a failure to achieve that epistemic goal. And second, it suggests that this primary goal should be pursued in an enterprise of collective decision-making in which dissensus and contestation play a subordinate role; they are not allowed, for example, to raise issues about the scope of the decisions made or the authenticity of people’s expressed preferences (12). A remedy for this failure, he thinks, requires ‘a shift of perspective’. And so the question is whether republican theory would support the sort of shift he has in mind.

The republican model of democracy, as I present it, has deep commonalities with deliberative democracy, because it prioritizes what I call the acceptability game over the acceptance game in a range of decision-making sites. In an acceptance game the participants bargain: they put forward proposals on more or less overtly self-interested grounds, each seeking to get the others to accept a resolution that satisfies their personal preferences as well as possible. In an acceptability game, they are each allowed to put forward proposals only on grounds that everyone is in a position to treat as relevant; they are banned from citing considerations in support of a proposal that can appeal only to themselves or only to a minority.

The common commitment to the acceptability game, however, leaves room for important differences between the approaches. Unlike deliberative democracy, republicanism suggests that that decision-making procedure is important, not for intrinsic reasons, but because it may help to reduce the possibilities of domination

in public life. And unlike deliberative democracy, at least as Biale envisages the approach, it does not envisage the mechanical implementation of that procedure at every possible level of government, ranging from the small-scale to the large-scale. The role of the acceptability game in the mutually accessible areas where it applies—say, in parliament, in the courts or in various committees—is to generate a sense of the standards that pass muster on all sides of the society and that government ought to be constrained by, under suitable institutional pressures; this form of constraint may be expected to reduce the possibilities of public domination.

Does the republican model attract the two criticisms that Biale makes—fairly or unfairly (see Parkinson’s contribution to this symposium)—against deliberative democracy? Taking up the first criticism, he suggests that I ‘assume some standards of political correctness that are independent of democratic procedures’ in ‘focusing on the quality of the outcomes of an acceptability game’, acknowledging that I do not clearly state this (23). I disagree with him on this point, however: I do not clearly articulate the position he ascribes, because I don’t endorse it.

My reliance on the acceptability game as a model of democratic procedure, within a network of mutually accessible decision-making sites, presupposes the independent value of equality among the members of a society—their right to be treated as equals—but that is all. There is no pre-determined criterion as to where the acceptability game ought to lead participants, whether those participants comprise all the citizens of a society—surely, an unlikely possibility—or a more restricted group.

The only constraint on the exercise is that participants should be forced to rely on considerations that all can see as relevant—not just all in the group but all in the society at large. While this

structural constraint will certainly reduce the sorts of proposals that the exercise may generate, there is no substantive constraint on where it is ought to be allowed to lead. Biale (12) cites my suggestion that the considerations valorized are likely to fall into two broad categories, reflecting convergent and concordant interests in the society. But that comment is not meant to impose a restriction on what the acceptability game may support; it is put forward, rather, as a prediction about what it is likely to support.

Biale's second criticism of deliberative democracy is that it privileges collective decision-making and gives a secondary, merely corrective role to dissensus and contestation. He suggests that the republican model I favor may be subject to the same problem, holding that 'the acceptability game is not compatible with those critical interpretations of the deliberative ideal that ground democratic legitimacy in citizens' contestatory power' (24). Again I am inclined to disagree.

On the republican model, democracy does not involve a hierarchy of nested decision-making groups, each pursuing the acceptability game, let alone a single group — the citizenry at large — that implements such a procedure. On the contrary, it represents a mixed constitution in which there are many sources of conflict and contestation. Prominent amongst these is the contestation of those citizens that do not see the policies promoted at one or another government site as reflecting standards that they can support. In this model, dissensus and contestation are not just a source of corrective blips that the mainline machinery of democratic decision-making has to absorb. On the contrary they play an essential part within that machinery, helping to generate the sorts of policies that materialize as an end-product of cross-communal exchange.

Democratic governance is not confined on this model to the authorial generation of proposals by centralized, decision-making

bodies, not even to the generation of proposals in the interaction between such bodies. Where those bodies may play the role of authors, it is the people in their different forms of presence—collective, sectional or individual—who serve as editors. The laws and policies that come to obtain in a society, then, ought to be equally the product of these forms of authorial and editorial control. Insofar as dissensus and contestation have an editorial role, then, they are just as important to democratic governance as the authorial inputs mounted on the basis of consensus within this or that decision-making body.

II

Reply to José Luis Martí and Hugo Seleme

Jose Luis Marti and Hugo Seleme raise three important, separate challenges to the position defended in the book. The first of these bears on the relation between social justice and political legitimacy; the second on the eyeball test for justice, as I call it; and the third on the dual-aspect model of democracy that I defend. I will deal with these in turn.

Political legitimacy, as understood in republican terms, turns on how far the law under which the people of a society live mediates public domination by government; and, by contrast, social justice turns on how far that law protects individual people from the private domination of others, whether as individuals or in a corporate role. Legitimacy is equivalent to the absence of public or vertical domination, requiring you to share in equal control of the interference that government inevitably practices in your life. Justice is equivalent to the absence of private or horizontal domination, requiring you to be more or less proof against the interference of others in suitable choices: you should

enjoy their non-interference robustly over whether or not they have a will or a wish to interfere.

At various points in the book I indicate a belief that legitimacy has a certain priority over justice, using at one point the following observation. If you operate under an illegitimate, dominating government then the fact that the laws it imposes protect you against private domination does not yet ensure that you enjoy the non-interference of others with full robustness. For while others may not dominate you in a private capacity—while you may enjoy non-interference in suitable choices robustly over variations in their wish or will to interfere—you do not enjoy it with robustness over variations in the public will. That is because the fact that the government has dominating power in the lives of citizens means that should those in government form a wish or a will to withdraw legal protection from you, or indeed from citizens more generally, then you would again be exposed to private interference.

Martí and Seleme raise an interesting challenge on the basis of a statement of my position that does not explicitly introduce talk of degrees of robustness in the way I have just done here and does not distinguish as such between robustness over variations in private will and robustness over variations in public will. I make the point of the above paragraph by saying that without political legitimacy the robustness that social justice requires cannot be realized in full measure. But that then suggests that a lack of political legitimacy entails a lack of justice. And in that case how can I say that legitimacy and justice, albeit empirically correlated, are independent values: that neither entails the other?¹

¹ Philip Pettit, *On the People's Terms. A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), p. 130

Once degrees and kinds of robustness are put explicitly into the picture, I hope that my position will regain coherence. I think that political illegitimacy means that there cannot be full robustness in the enjoyment of private non-interference; there cannot be robustness over variations in the will of those in government to protect you, although there may be robustness over variations in the will or wish of others, in their private capacity, to interfere. I am grateful to Martí and Seleme for forcing me to be clearer on this point. I hope I am also clearer in a recent paper on the priority of legitimacy over justice.

The second comment raised by Martí and Seleme is equally challenging, although it bears on a different aspect of the republican view I defend. Drawing on the rich literature of the republican tradition, in particular the recurrent image of the free independent citizen, I suggested in my book that a good, working test of whether someone enjoys social justice—private non-domination—is whether they are able to look others in the eye without any reason for fear or deference—in particular without any reason deriving from the power of interference enjoyed by others. The test is quite intuitive, since we readily credit anyone who passes it with the social status of someone consciously enjoying the independency upon the will of others with which republicans traditionally associated freedom of the person.

But whether you have reason for fear or deference depends on the conventions of your local society, as I register in the book. While the ability to rely on your own cunning or comrades might have been enough in a medieval city to ensure that you could walk down a street at night-time without reason for fear or deference, it would scarcely count as enough to secure that result in a contemporary urban setting. In a contemporary world you would pass the test only if your society provided for proper street lighting, a responsive police force, and perhaps the ready support

of civic-minded bystanders. In the medieval world you might have counted as timid, if you were unwilling to rely on your cunning or comrades for security in the context described; in a contemporary world you would count just as sensible or cautious.

Embracing this relativity to standards, I suggested that there is no trans-cultural model of the person who satisfies the eyeball test but rather different models for different cultures. On this interpretation, the test of whether you are unfree is like the test that Amartya Sen introduced for poverty². He rejected a universal, uniform conception of poverty that would set the same standards for every society in favor of a conception that remains universal—to be poor is to lack the resources needed for basic functioning in your local society—but that allows for multiform interpretations. According to the eyeball test, to be unfree—that is, privately undominated—is to lack the protection and empowerment needed for being able to look others in the eye without reason, by the standards of your local society, for fear or deference. And while that test remains universal, it too supports multiform conceptions of what freedom requires.

Martí and Seleme raise a problem for this contextualization of the ideal of freedom—strictly, private domination—by arguing that it would allow you to be unfree relative to one society but free relative to another: in particular, another to which you might even be able to travel at will. Thus by just changing society you might be able to move from a world where you could not look others in the eye without reason for fear or deference to a society where you could. They suggest that in allowing this I acknowledge ‘a spurious way of gaining freedom’ (33).

² Amartya Sen, “Poor, Relatively Speaking,” *Oxford Economic Papers* 35 (1983), pp. 153-68.

I am not unduly concerned about this challenge, intriguing though it is, because I assume that standards of timidity will vary in general only with a variation in the quality of legal protection that people enjoy against the interference of others. It is in response to the best that can be expected under local laws and conventions, that people form views about what counts as excessive timidity and what as sensible caution. And this means that as you move between different dispensations, you are likely to adjust to the standards of timidity that are appropriate to the laws that obtain in the new society; you are unlikely, as they suggest, to carry the old standards with you and benefit from preserving them.

Let legal protection be excellent, plausibly, and standards of timidity will be pretty high; let protection be poorer and those standards will be relatively low. Thus, as you move between a society with low standards to a society with high, you will quickly learn that the basis of self-confidence you bring with you is inappropriate in the new context. You may initially think you have no reason for fear or deference in relation to others, when by the standards of the new society you have. But you will quickly learn of your mistake and hasten to adjust to the new standards. Thus you may be an illegal immigrant in a modern society who thinks that the perils you face are as nothing beside the perils of the country you left. But you will quickly learn that that self-confidence is misplaced: that lacking the innocuous-looking identity cards carried by locals in the new society means that you have every reason for fear and deference.

The third issue raised by Martí and Selemé is more far-reaching than the other two, bearing on a difference in the institutional models of democracy—not strictly, despite how they word it, in the philosophical theories of democracy—that we defend. I argue in the theory of democracy, and I think they

would agree, that democracy requires that the people should have, not just an influence on how the state operates, but a directive influence: a degree of control sufficient, ideally, to ensure the satisfaction of the tough-luck test. According to this test, you live under a suitably controlled, undominating government if you have good reason to think of any laws that are particularly unwelcome that it is just tough luck that they should have been put in place; it is not a sign of the operation of an alien will that is hostile to you or your kind.

What institutional model is likely to deliver a working democracy that is likely to satisfy this test? Martí and Seleme are critical of the fact that I do not go into much detail in spelling out my institutional proposals (34). But I think that that is a bit unfair. The main part of the book is designed to defend a republican theory of democracy as a means of guarding against public domination and achieving political legitimacy. The last two chapters are attempts to show that the ideal hailed by that theory—an ideal of equally shared popular control over government—is not utopian: that there are institutions that promise to deliver something that approaches this. It would not be possible to defend a detailed account of the best institutions without relying on extra-philosophical resources of empirical research and modelling. And I do not have those resources of institutional design at my command; they require interdisciplinary collaboration.

But putting aside their complaint on that score, Martí and Seleme raise an interesting question that it may be possible to address more properly. This is the question as to whether we should think of the people in a democracy as cooperating intentionally with a view to imposing their shared preferences or views on the policies of government. A Rousseauvian view of democracy—or a quasi-Rousseauvian view that allows for

representation—would suggest that the answer is positive. I argue in the book that this is unrealistic.

On my view people will certainly act intentionally in seeking to be part of the exercise of popular influence over government, whether at the polls or in contestatory movements. But they are so unlikely to converge on what they each think government should do that we can hardly represent them as intentionally imposing agreed constraints or targets on government.

Is this a reason for despair? I do not think so. For what I argue is that under the constraints of a mixed, contestatory democracy—in particular, under the constraints associated with the recursive use of the acceptability game—people may be expected to generate a shared sense of community standards as a by-product of their involvement. These will be standards or desiderata that may be invoked for or against public policies or processes such that no government can neglect them and expect to command popular acceptance. I argue that insofar as this effect is in place, the collective influence that people intentionally seek should have the consequence of pushing government in a collectively acceptable direction; it should represent a form of popular control.

There is no hope of this popular control materializing in the short term, of course, and I use historical material to suggest that it may be apparent only over the *longue durée*. Thus the democracy I envisage is going to have two aspects: it will be a fast democracy of an electoral and contestatory struggle for influence, on the one side; and a slow democracy of growing popular control, on the other.

Martí and Seleme upbraid me for shrinking from the Rousseauvian image, suggesting that I do so because it requires more civic virtue than my dual-aspect model. I agree that it does

require more civic virtue and I think that that is something of a problem. But my main argument for the dual-aspect model is that it looks much more feasible than the alternative in a variety of respects, not just in economizing to some extent on civic virtue. I agree that I provide only a sketch of the constitution envisaged but I would hope that others with empirical and modeling skills may be able to build it up into a more compelling alternative than it presents in my own account.

III

Reply to Pamela Pansardi

Pamela Pansardi takes up at greater length, and with exemplary clarity, the first of the three issues addressed by Martí and Selemé: that of the relationship in my republican theory between legitimacy and justice. I can be brief in my reply, as some of the issues raised have been discussed already.

Using the language of normative and logical priority, Pansardi argues that while legitimacy enjoys a normative priority over justice, as she takes me to argue, the reverse is true of what she describes as logical priority: justice is logically prior to legitimacy; it is a necessary condition, as she also puts it, for legitimacy. I am not sure that this is the best terminology in which to frame her thesis but, once reframed, I accept most of what she says.

Legitimacy is normatively prior to justice, she claims, insofar as the following is true: ‘between two societies that both satisfy the minimal requirements for justice and legitimacy, the one we should prefer is the one which scores better in terms of legitimacy’ (54). This may not be the happiest formulation of the normative priority claim, since it would seem that not only should we prefer the more legitimate of two societies that are equally

just; we should also prefer the more just of two societies that are equally legitimate. I take it that what she has in mind, however, is that if we had a choice between making a minimally just and legitimate society better in one or the other dimension, we should choose to make it more legitimate.

I can endorse that claim, for reasons she cites and that I discussed in the reply to Martí and Seleme: that any shortfall in legitimacy reduces the degree of robustness with which you enjoy justice but not necessarily vice versa. Suppose there is a decline in legitimacy that leaves you at the same level of justice. While you may still enjoy the exercise of your basic liberties robustly over the same variations in what private citizens prefer that you choose—while in that sense you may enjoy the same level of social justice—you will not enjoy it robustly over the same variations in the preferences of those in public office for the legal protection you should enjoy in private life. Thus the decline in legitimacy will impact negatively on the overall robustness with which you enjoy social justice.

Suppose on the other hand that there is a decline in justice that leaves you at the same level of legitimacy. There may be empirical considerations triggered by such a decline that affect the level at which you enjoy legitimacy but there is no necessary connection between the two. You are left by hypothesis at the same level of legitimacy and the decline in justice does not necessarily—I emphasize ‘necessarily’—affect the robustness with which you, presumably in tandem with others, can control the interference of government.

These considerations support the normative priority of legitimacy over justice, as Pansardi understands it. And they support at the same time a certain logical priority for legitimacy over justice. They mean that you cannot enjoy social justice with maximal robustness—that is, robustness over variations in the

private and public preferences of others—without enjoying political legitimacy as well: to the extent that legitimacy is absent, justice will be less than fully robust. But that means that legitimacy is a logically necessary condition for fully robust justice and in that sense enjoys a logical as well as a normative priority. (It also means that fully robust justice is a sufficient condition for legitimacy but the sufficiency of that condition is intuitively derived from the necessity of the other.)

What, then, does Pansardi mean by arguing, as it seems to the contrary, that justice is a necessary condition for legitimacy? She means, as it is surely plausible to claim, that in a society where people did not enjoy robust access to the basic liberties—did not enjoy the powers linked with freedom of speech and association, for example—there would be little chance of the regime being legitimate: the lack of those powers would block people from being able to exercise the control that legitimacy requires over those in government.

I agree with the substance of these claims, which I associate strongly with Juergen Habermas and Rainer Forst and a range of other thinkers. But what the claims establish, as I would put it, is that social justice, or at least a high degree of social justice, is an empirically necessary condition for legitimacy, not that it is logically necessary. In strict logic, the truth of the proposition that people enjoy such and such a degree of control over government does not require that they have any particular social liberties or powers. That it requires those liberties and powers is something that reflects unchallengeable but still contingent facts about our human nature and our social life.

This means that Pansardi and I are in full agreement about the priority claims but differ only in how we choose to articulate them. In my favored articulation, political legitimacy enjoys normative and logical priority over social justice—this, in the

sense that it is needed for the maximally robust enjoyment of social justice. But at the same time it is undoubtedly true that in empirical practice—in practice, at any world like ours—a high degree of justice is a necessary condition for legitimacy: organize a society that is designed to be legitimate and you are bound to make it substantively just as well.

IV

Reply to John Parkinson

John Parkinson recognizes that as a theory of democracy, republicanism is quite distinctive (60-61). It takes the role of democracy to be one of promoting the equally shared, popular control of government required for combatting the possibility of public domination. Thus it contrasts at this level with other accounts of that role such as that which would take it, in the spirit of deliberative democracy, to be the imposition of deliberative norms on government policy-making.

But despite this theoretical divergence, Parkinson argues that the institutional model of democracy that I associate with republicanism—the multi-layered, multi-centered ideal of the mixed constitution—converges quite closely with the more recent models developed in deliberative democratic circles, specifically in what he describes as deliberative systems theory. This is a form of convergence that I entirely overlooked in writing my book. I can only invoke the excuse that most of the work in this deliberative-democratic tradition has appeared only very recently, as he recognizes (77).

Parkinson offers a variety of comments, some more positive, some more negative, on the republican model of democracy offered in the last two chapters of my book, putting it in

interaction with the deliberative systems model that he takes to be the mature form that deliberative democracy has achieved. I applaud the development of the deliberative systems model, as he characterizes it, although I am surprised at his silence on the theoretical ideal driving it and wonder whether it belongs with deliberative democracy, traditionally understood. For all he says, the theoretical ideal behind democracy might be as well be republican—the countering of public domination—as democratically deliberative.

We may put aside this issue about the theory of democracy, however, and focus on the comparison of models. Parkinson suggests that my model has ‘much more in common’ with the deliberative systems version of deliberative democracy than I allow. In holding by this claim he says: ‘Deliberative democracy has become systemic; is no longer so obsessed by minipublics; embraces contestatory citizenship (indeed, gives it normative priority); and is beginning to think about the relationships between representative institutions of a variety of stripes, the “wild” public sphere, and policy and law making’ (77).

In a refreshingly helpful manner, Parkinson goes on from this assertion of convergence to argue that there is a possibility of two-way learning between the two approaches. Thus, on the one side, he holds that the deliberative systems model can benefit from embracing something like the ‘democratic proviso’, according to which the value of people’s enjoying an equal share in control of government is not itself subject to democratic negotiation; it represents an external constraint on the characterization of democracy. And, on the other, he believes that the republican model can benefit from the insights of deliberative systems theory. ‘Modern deliberative democracy challenges Pettit to look beyond small-scale institutions and small-scale examples, and thus present something more

thoroughly in keeping with his own aims – a philosophy of democratic systems that is less reliant on the philosophy of small engagements writ large’ (77).

I am entirely on side. As this remark suggests, I am sure that I do rely too much on small-scale analogues—say, that provided by the condominium—in developing a sense of how ‘deliberative norm dispersal’, to use a phrase of Parkinson’s, can help effect a sort of control over how government decisions are made. I am sure that he is also right in suggesting that I haven’t looked at the best or most complex examples available of what he calls mini-publics: in my language, indicatively representative bodies that seek to operate like the British Columbia citizens’ assembly under the discipline of an acceptability game. And I am prepared to acknowledge the possibility that I have been unimaginative, if not romantic—that charge I do reject—in my continuing attachment to the primacy of elected bodies that are designed to be responsively rather than indicatively representative.

The main aim of *On the People’s Terms* is to make sense of the role of democracy, and the broad shape it ought to assume, under a republican theory that stresses the importance of freedom as non-domination. The institutional model developed in the last two chapters is a first pass at showing how familiar sorts of institutions might be amended and supplemented so as to deliver the republican ideal. At the abstract level this ideal requires a system under which people enjoy equally shared control over government. At a more concrete, as the book argues, it requires a system of influence that is equally accessible to people across the society and that promises at a significant level of description to deliver policies and processes that are equally acceptable to all: acceptable in a way that enables them to satisfy the tough-luck test mentioned earlier.

I am very happy to concede that the development of this concrete ideal—the development of a dual-aspect model of democracy—is the work of many hands, and of hands more skilled than mine in institutional modeling and the empirical analysis of data. Parkinson’s paper is an encouraging contribution that suggests that normative democratic analysis—the search for an informed, normative model of democratic organization—is a promising research program that it can be can be profitably pursued across differences in the philosophy or theory of democracy.

Princeton University

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Australian National University

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