

Unpolitical Democracy

Political Theory

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Abstract

This paper analyzes critically the appeal the unpolitical is enjoying among contemporary political philosophers who are democracy's friends. Unlike a radical critique of democracy, what I propose to call “criticism from within,” takes the form of dissatisfaction with the erosion of an independent mind and impartial judgment per effect of the partisan character of democratic politics. This paper proposes three main criticisms of the actual trend toward unpolitical views of democracy: the first points to the strategic use of deliberation as an antidote against democratic procedures themselves (like voting and majority rule); the second to the negative conception of democracy that the unpolitical aspiration makes visible; and the third to the dissolution of political judgment within a model of judgment that is tailored around justice.

Keywords

Unpolitical, antipolitical, antidemocracy, deliberation, political judgment, impartial judgment.

In his *Reflections of a Nonpolitical Man*, a provocative critique of democracy written in 1918, Thomas Mann maintained an intrinsic relationship between “politics” and “democracy.” “The political-intellectual attitude is the democratic one; belief in politics is belief in democracy.”¹ Democracy is unavoidably political because it makes all issues an object of public evaluation and all values a matter of opinion and consent. This was, according to Mann, its chief and unamendable flaw. It was a flaw because no unpolitical good could survive the corrosive power of government by discussion (certainly not the nation, the decline of which Mann lamented as the effect of democracy).² It was unamendable because democracy could not exist without it. When critics

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of democracy, Mann explained, set out to denounce the corrupting effect of radical politicization on public ethos they are forced to behave politically; to promote their antipolitical claim they have to become partisan, thus, democratic. "One is not a 'democratic,' or, say, a 'conservative' politician. One *is* a politician or one is not. And if one is, then one is democratic."³ Mann saw the political attitude as a "nonvalue" insofar as it made all values dependent on the changing mood of political actors and majority rule.⁴ Only its subjection to a superior good—like truth or an ethical value—could allow forms of public activity that transcended partisanship and served the community with independent spirit. Echoing Max Weber, Mann opposed "politics" as an ethics of responsibility and competence to the "political attitude" that competition for office propelled.

Indictment of politicization is not new to critics of democracy. Historically, it took two prominent directions, the first rationalist and the second traditionalist. On the one hand, the democratic principle of popular consent was criticized from the perspective of a priori superior goods like truth or justice. From Plato to the Marquis de Condorcet and contemporary theorists of deliberative democracy, "most lovers of truth [have found] democratic elections rather hard to stomach" because of their unavoidable partisan character, and tried to envisage decision-making procedures that could approximate rationality and reconcile democracy with goals superior to political power and biased opinions.⁵ On the other hand, the principle of popular consent was met by the antidemocratic reaction of communitarians, antirationalists, and antiegalitarians, political thinkers who reacted against the process of political emancipation that started with the French revolution in the name of historical continuity as condition for social stability.⁶ Edmund Burke and Joseph de Maistre were critical of democratically elected assemblies on the account that they dethroned competence and virtue from politics and made the latter a litigious arena of ideological battles, in which all issues were relative in value and subjected to the volatile opinion of numerical majorities.⁷

Yet Mann's concern with politicization is more intriguing than traditional antidemocratic lamentations and moreover it presents us with the key to interpret the appeal that the unpolitical is enjoying among lovers of truth who are also democracy's friends. Criticism of democracy's vocation to politicize all decisions can be found in Philip Pettit's work and, to a lesser degree, in Pierre Rosanvallon's.⁸ Certainly, Pettit's and Rosanvallon's quest for, and appreciation of, the unpolitical does not share the same motivation as Mann's and traditional antidemocrats. In fact it would be a grave mistake to identify these critical trends as if their call for the unpolitical were spoken in the same language and for the same sake.

The phenomenon of modern antidemocracy is complex. As in ancient Athens, it made its appearance along with democracy and has accompanied its progression and participated somehow in its making (as a matter of fact, neither Philadelphia's nor Paris' constitution makers interpreted their own achievements as democratic because they believed a republic was more secure and virtuous than democracy and less exposed to partisan divisions). Moreover, criticism of democracy does not involve only the enemies of the government of the many. Unlike radical criticism, what I propose to call "criticism from within" takes the form of dissatisfaction with certain aspects of democratic political practice. It is an autonomous expression of discontent, different in kind from the assault on democracy that springs from intrinsically antidemocratic principles. Distinctions among streams of criticism must be carefully made to appreciate their different intentions and concerns. For instance, whereas Mann's intention was to censure the very process of democratization, the intention of today's critics from within is to protect, as it were, democracy from its own weaknesses. Pettit argues that depoliticization is needed to realize democratic deliberation: "if deliberation is really supposed to rule in public life, then there is no option but to depoliticize public decisions in various ways."⁹ Rosanvallon observes approvingly that in modern democracy, ordinary political processes are happily complemented with unpolitical practices and impersonal mechanisms of control designed to promote decisions that are more in tune with democratic principles.¹⁰

Concerns are also different. Mann's main concern was with the undermining of communitarian values such as the ethical "mission" of the German nation. Processes of domestic and international democratization, he thought, will make all individuals "free and equal" but they will also disintegrate the nation, which is not the sum of equal units. This disintegration would be fatal to democracy because a society of self-absorbed individuals with no prepolitical loyalty and solidarity is destined to become more inegalitarian, divided, and unjust; in the end, the erosion of unpolitical values will ruin democracy. Contemporary democratic theorists have a different concern because their goal is different. Their goal is not protecting or restoring some communitarian goods, but achieving decisions truly informed by and consistent with the principles of liberty and equality that democracy itself proclaims. Their concern is precisely with the disappearance of what Mann thought to be the main defect of democracy: rationality, humanity, and individual liberty. Pettit's and Rosanvallon's concern points to the erosion of independent mind and impartial judgment, the sole bases for just decisions that approximate truth and make citizens' liberty more secure. Yet despite these important differences, contemporary critics from within think, like Mann, that democracy

has an endemic predisposition to foster partisan views *because* of its politicizing nature. To paraphrase Nancy Rosenblum, the evolution of modern democracy belongs to the history of the “moral disdain for partisans” and partisanship.¹¹ The new attraction to the unpolitical in contemporary democratic theory is yet another chapter in that history.

How are we to judge the unpolitical temptation in contemporary democratic theory? Dissatisfactions with the rationalist transformation of political discourse in deliberative theory of democracy are not new. In recent years, political theorists have criticized the antirhetorical use of deliberation as a process of “constrained reason” as an erosion of citizens’ political action.¹² They have blamed deliberative theory for making democracy a regime of consensus that expels antagonism and disagreement with the consequence of rendering the citizens politically apathetic.¹³ My proposal is to critically discuss the allegation that issues of public concern should be given depoliticized answers *all the while knowing* that this patently conflicts with the character of democracy. In this article, which is part of a broader study on the facets of modern antidemocratic thought, I discuss the allegation of politicization raised from within democratic theory and treat it as an exemplary case of “criticism from within.”

I shall propose three main criticisms of the actual trend toward unpolitical views of democracy. The first points to the strategic use of deliberation as an antidote against democratic politics itself; the second to the negative conception of democracy that the temptation of the unpolitical makes visible; and the third to the dissolution of political judgment within a model of judgment that is tailored around justice. Rosavallon’s and Pettit’s idealization of the unpolitical and their critical reflection on partisanship eloquently illustrate these critical trends. These two authors belong to different intellectual traditions and pursue different agendas, yet their line of thought shows remarkable affinities. Rosavallon frames his argument for the unpolitical within the dialectics between actuating politics (institutional *legitimacy* or the work of democratic procedures) and counterpolitics (exercise of *defiance* or the critical work of the public) and locates the quest for nonpartisan politics in the latter, which is the domain of *negative as critical power*. Pettit sets up the terrain for a radical depoliticization of democracy by resorting to an old republican strategy that separates the two main functions of democratic practice: deliberation and decision. In his view, the former should entail competent and dispassionate judgment and the adversarial control on proposals and decisions, while the latter should consist merely in voting and majority rule, the two criteria of democratic decision making by the citizens (suffrage) as well as their representatives. As for the target of their criticism of the partisan

character of democracy, Rosanvallon's is populism while Pettit's is the very "system whereby the collective will of the people rules" in representative democracy.¹⁴ Despite these important differences, their reflections on the nature and risks of democracy are inspired by an ideal of deliberative democracy as a process of rationalization of collective decisions that is meant to promote a gradual, but significant, contraction of the sphere of democratic politics as a sphere in which decisions are made by majority rule because rational consent is missing. They suggest that the value and worth of deliberation rest in the latter's ability to amend democracy of its politicizing inclination either because it interrupts the path toward the permanent threat of demagoguery (Rosanvallon), or because it reduces the possibility of irrational (that is to say partisan and biased) outcomes that representative bodies and citizens' votes tend to reflect and facilitate (Pettit).

Deliberation as an Antidote to Democracy

Rosanvallon interprets representative democracy as an uninterrupted dynamic of the *reactions* of civil political society to the *actions* by the institutional political society. He reads democratic politics in both positive and negative senses. The *positive* sense refers to the formal and authorizing sovereignty of the will that springs from citizens' suffrage along with the authorized work of the institutions. The *negative* sense describes all those informal public activities that provoke *impediment, surveillance, and judgment*: forms of participation by means of which citizens check the work of democratic institutions and peacefully subvert the established order. Of the three forms of negative power, judgment is the most modern and important.¹⁵

Judgment acquired momentum in the second half of the twentieth century, in coincidence with the consolidation of constitutional democracy, the technological revolution of the means of information and communication, and the expansion of civil society, domestic and global.¹⁶ In representative democracy, the actor of negative politics is not the citizen-electors but the citizen-judge, which operates through an uninterrupted work of public scrutiny that is extremely influential on institutions although informal and not authoritative. Judgment is the site of *counterpolitics* or *counterdemocracy* (the decisions made by democratic institutions); it is located in civil political society as a permanent work of evaluation of the *politique politisée*. Negative power is the expression of citizens' distrust when distrust is not merely the symptom of a sentiment of dissatisfaction (which is permanent in democratic society and never completely sedate) but an active force of counterpower.¹⁷ Rosanvallon insists that counter- or negative politics may be unpolitical in its forms but is

not in and by itself a reaction against politics; the people-judge may give birth to a “frontal opposition against the established political powers” but is not antipolitical in its outcome.¹⁸ However, the unpolitical character that judgment puts in motion to check on and monitor institutionalized politics may encourage distaste for politics and even democracy.

Rosanvallón is aware of this risk when he observes that while the *démocratie impolitique* is an expansion of citizens’ indirect influence on institutions and the representatives through their censorial judgment, it may rouse a “decline of the political” just in the moment it unveils democratic politics’ inherent association with partial interests and even corruption, as Mann had also argued.¹⁹ This explains why, in contemporary democracy, citizens’ surveillance and criticism are not made in the name of more participation or their direct exercise of power. Citizens’ negative power conveys a message of *power-avoidance* rather than power-reclaiming, also because judgment is the power of the spectator, not of the actor. As we shall explain below, unlike the political actor, the judge needs to be disengaged and external to the fact in order to judge competently.²⁰ In Rosanvallón’s mind, this is or should be the attitude of the citizens when they monitor and evaluate their representatives’ decisions.

Unpolitical democracy is a detached form of participation, as that of independent viewers or evaluators. It is, as it were, a form of passive presence. Indeed, the goal of the citizen-judge is to make power more transparent and impartial, not more accessible or widespread. Its goal is to devise institutions and rules that can in the long run make political participation less needed. Apathy as the drying up of passionate involvement seems to be the final outcome of an effective negative power.²¹ This paradox raises the legitimate doubt that counterpolitics or unpolitical democracy can actually foster antipolitics, either as distaste for ordinary politics or as populist quest for an exemplary disruption of ordinary politics.

Rosanvallón acknowledges these risks but does not seem to worry about the latent antipolitical implications of the unpolitical. Actually, he regards citizens’ negative power as an effective barrier against populism, the pathology of democracy and a true denial of politics.²² Populism is to representative democracy what tyranny was to the direct democracy of antiquity. It may be described as the militant use of partisanship for sake of abolishing pluralism in partisan views and create a uniform opinion.²³ In Rosanvallón’s rendering, the broadening of impartial judgment is meant to be an antidote to it because partisanship, in contrast to impartial or independent reasoning, is the natural nourishment of populism. Accordingly, deliberative fora of discussion and issue-based committees by experts (practices of public judgment that

pervade today's domestic and international arena) should be welcomed as sites of negative power in modern democracy. They are a check on partisan politics *and* potentially tyrannical majorities, and moreover activate the reserve of defiance (*r serve de defiance*) that naturally exists in democratic society. They make the public attentive rather than mobilized, suspicious rather than faithful to a leader or an ideology. Their worth, Rosanvallon adds, is proved *a contrario* by judgment's misuse by populism: when an *audience populist leader* declares to be the true representative of people's will beyond and outside the electoral mandate, he puts in motion the destructive power of judgment and calls into question not simply a bad or corrupt performance of state institutions but electoral politics itself, its advocacy character.²⁴ But contrary to the populist leader's ambition of representing the purity of people's will independently of the electoral mandate, the citizen-judge wants to restore, not vilify the moral legitimacy of representative institutions. Thus negative power respects representative democracy's positive power. Hence Rosanvallon's conclusion that since populism is a threat contained in the genes of politics' partisan nature, it can be neutralized effectively only by relieving democracy of partisanship. Impartial judgment would thus play a hygienic function.

The question is that the border line that separates unpolitical and antipolitical expressions of popular mistrust is very thin, although for a reason that Rosanvallon does not contemplate. If we pay attention to the recent fortunes of populism (both in its traditional form and as videocracy) in Europe, we may see that populism has found fertile soil precisely in countries in which the distrust of parties and partisanship has been very strong. In Italy, the Northern League and Mr. Silvio Berlusconi emerged in 1990s, during a time in which traditional parties had declined per effect of both corruption and the end of the polarized ideologies of the Cold War. Decline in partisan identifications translated into a decline in citizens' participation (both electoral and associational) and the broadening of the distance between citizens and institutions. It did not, however, bring a more reasonable public sphere; not did it bring more numerous independent voters or the rise of nonpartisan and more objective sources of information.²⁵ Instead it opened the door to new political actors and movements that built their ascendancy on a public arena that was emptied of partisan attachments, and branded the language of nonpartisan politics and free and private media against traditional forms of political aggregations. Populism succeeded by making the citizenry an unqualified and undefined public of individual voters, with no party affiliation and loyalty.²⁶

What, then, is the antidote to the risk of a displacement of politics that negative power may foster, particularly if this power takes the feature of a distrust and suspicion for partisan leanings? Rosanvallon agrees that the antidote is not to be found in the myth of self-regulated markets as neoliberals have prophesized in the last decades. Its site cannot be the instrumental reason of the private individual but the impartial judgment of the citizen.²⁷ To him as to Pettit, judgment is the reserve of impartiality and reflexivity, two qualities that can amend the politics of partisanship.

In the second half of the twentieth century (with the Nuremberg trial as a symbolic turning point in legitimating the role of judgment), the place of judgment in politics has become gradually more esteemed and pervasive. Meanwhile, the people-judge that emerged in the nineteenth century as the generating force of public opinion has gradually become more specialized and sophisticated, thanks also to the technological revolution of the media. Along with the traditional forms of judgment (surveillance and control that citizens' diffuse political action engenders), judicial forms of censure and adversarial initiatives have increased their influence. Their purpose is not simply that of monitoring ordinary political decisions (constitutional courts) or promoting new or different decisions (public opinion and social movements), but rather that of reaching impartial opinions on issues that, if left to political arena, would be exposed to citizens' biases. "From here comes the growing importance we must recognize to the development of new modes of intermediary structuring of actions of surveillance by means of militant yet *not partisan* organizations."²⁸ Bipartisan committees, rather than political assemblies, are the strategies of discussion and agreement capable of compelling participants to polish their partial views and reason dispassionately as only judges in the court can do. Thus, the ideal site of impartiality is the domain of justice not of the market, because the former is more consistent with the monitoring character of negative power and the diarchy of will and judgment that makes for representative democracy. Deliberative fora and gatherings of sorted or selected citizens and appointed experts in ad hoc committees for the sake of problem solving or the critical assessment of controversial issues are the new terrain in which the negative power of the citizen-judge shows its compelling counterdemocratic effects.²⁹

But are these forms of collective action a true "redemption" of democracy? I would like to raise four doubts about the ability of these new experiments of independent public reasoning to fulfill the role Rosanvallon assigns to them. First, deliberative committees reflect the idea that representative bodies are mainly partisan and hence irrational or incapable of judging the public good impartially; they question the main institutions of modern

democracy: elections and representation. Take, for instance, the case of new deliberative creations like “deliberation day” and the growing practice of non-elected, carefully designed venues into which citizens are selected for representative (of the general public’s opinion) purposes, such as recent experiments with citizen juries and panels, advisory councils, stakeholder meetings, lay members of professional review boards, representations at public hearings, public submissions, citizen surveys, deliberative polling, deliberative forums, and focus groups. These are all examples of self-authorized representational forms that Row and Frewer have named “citizens representatives.”³⁰ As the ideal of deliberative assemblies of this kind stands, citizen representatives are intended as supplements to elected representative bodies or administrative bodies in areas of functional weakness or highly contested issues; areas in which a large consensus would be desirable to overcome the sense of injustice that a decision carried on by majority rule may instead create. Although these deliberative assemblies have no power to substitute for authoritative political institutions or elected representatives (they are meant to offer advice, not make decisions), their “competent” and “impartial” outlook gives their opinion a moral authority that sometime exceeds that of authoritative political bodies (the only ones that enjoy democratic legitimacy). In these cases, democratic legitimacy is felt as faulty because it is unable to deliver decisions that are truly above “the will of all,” to paraphrase Jean-Jacques Rousseau, the theorist who is the hidden inspiration of today’s critics of democracy from within.

A second critical reflection pertains to the fact that these committees are a challenge to the democratic sovereign in another important way. Indeed, in the mind of their proponents, the results of these informal bodies of deliberation are not meant to be simply counterfactual but also a kind of statistically representative snapshot of the existing but latent preferences of citizens—something that power-holders seeking to represent “the people” need to know. This is the reason why governments increasingly constitute citizen juries and panels whose charge is to represent the views of citizens more generally on a given issue.³¹ However, should these forms grow they would bring new challenges to democracy because any randomly selected deliberative body will inevitably generate opinions that are different than public opinion, and moreover, the opinion that elections register. Who is going to resolve the disagreement between positive power (elected lawmaking assemblies) and negative power (informal gathering of citizens’ representatives)? Is it not possible that this disagreement will have the unintended consequence of strengthening the power of administration and the bureaucracy?

Thirdly, these deliberative committees may encourage elitism, impersonating citizens' engagement while actually encouraging passivity. As Bruce Ackerman has noticed, randomly selected bodies may become tools that elites can use to legitimate their policies while bypassing electoral accountability, or substituting for broader citizen judgment and participation.³² Moreover, if we judge these new forms of citizens' deliberative fora from the perspective of democratic participation we cannot neglect the fact that this surplus of representative participation mobilizes few citizens while making the many (in the name of whom the selected few are asked to express their deliberative opinion) even more passive. Jane Mansbridge has convincingly observed that since participants volunteer, those who have most intense interest in participation or a louder voice often dominate.³³ Connecting non-elected bodies to broader publics in the absence of an electoral mechanism would be in itself a challenge to democracy. Unpolitical democracy entails relocating public action outside the places in which political decisions are to be made according to democratic procedures. It prefigures a transformation of the meaning of politics according to goals and criteria that recall the nineteenth-century utopia of the rational power of the experts. It suggests that politics is a cognitive practice for reaching true outcomes, solving problems, and moreover eradicating "politically-relevant reasonable disagreement."³⁴ Committees of experts or councils of wise and virtuous citizens, who are asked to advise rather than make decisions, are most of the time the means public administrators (elected officials in search perhaps of reelection) use for not simply getting advice but also conquering more popular support, taming popular dissatisfaction, and co-opting pressure groups most representative of important interests; in a word, increasing their credibility and trust through citizens' "engagement."³⁵

The fourth critical observation pertains to the lack of democratic legitimacy of these new practices of selected participation, pointing to a way in which they may be a contraction of democracy rather than its enrichment.³⁶ Indeed, in the deliberative fora the formation of the agenda and the frame of the questions to be discussed by the selected citizens are not part of the political process. They are instead kept outside the forum as the task of the mediators and organizers of these deliberative experiments. In clear violation of the democratic principle of autonomy, both the issues to be discussed without prejudice, and the procedures regulating the discussion, are not decided and chosen by the participants. Deliberative fora are made up of *tutored citizens*: spectator-judges who apply rules and procedures that others have devised and come to judge on facts they did not contribute in choosing. Selecting problems, framing agendas, organizing discussion, sorting out the audience, and

leading deliberation: all these decisions can be made without partisanship involved on condition they are not made by those who are supposed to judge or deliberate. If objectivity and impartial judgment are the content and goal of politics, citizens' participation may become irrelevant and actually undesirable because after all, a few competent or virtuous participants can perform better deliberative service than many ordinary citizens.

This is an old issue, and in fact reflects the main objection against democracy as the realm of opinions and decisions of the majority, since at least the classical essay by the Old-Oligarch and Plato's dialogues. Its renaissance should not come as a surprise, because deliberation has traditionally been the task of the competent few and a method for cooling passions and containing the democratic element. In the rhetorical tradition to which it belonged, it was prized as an activity proper to a *politeia* or *res publica* that belonged to the *genus demonstrativum* because it did not simply imply making decisions but also affecting the interlocutors' mind so that they could express their final say and together decide (although not necessarily agree). Both qualities (making decisions and affecting the interlocutors' minds) are directly correlated and entail that the exposure of arguments is decisive if consent is to be sought through discourse. However, there is no necessary correlation between deliberation and publicity and deliberation and political equality. In early modern states and principalities, for instance, the prince and his ambassadors deliberated about how best to wage a war or pursue a diplomatic mission, but were careful to avoid publicity. Moreover, until the revolutions of the eighteenth century, deliberation was associated with a frank discussion among equals in wisdom, or the few, and with circumspection or discretion. Even in our democratic age, deliberation retains an ambiguous relationship with participation. In order for "democracy to remain deliberative," Pettit has written, electoral interests (that is to say "personal, aspirational ideals") must be taken off the table. Otherwise the advantage of the large number will necessarily become the norm of decision making.³⁷

All in all, the risk of the unpolitical as dispassionate judgment is that it can suggest the desirability of bypassing the legitimate authority of citizens' suffrage and the parliaments (two essential components of modern democracy), or replacing active or actuating politics with a negative politics of judgment. This is, as we shall see below, also the message of political theorists who criticize democratic decision-making institutions. Clearly, the political sites of decision produce partial opinions; as with any decision taken by a majority they are somehow the expression of opinionated views. The solution that the critics of democracy from within advance is narrowing the role of democratic institutions (citizens' suffrage and parliaments); or more precisely, making

sure they are not the privileged sites of decisions. "Electoral interests" Pettit writes, "raise problems so far as they ensure that rather than letting the common good crystallize and rule, as deliberative democracy would require, they invest power in other sources of influence: popular passion, aspirational morality and sectional interests."³⁸

Neo-Roman Republicanism versus Democracy

Contemporary theorists' longing for the unpolitical is rooted in some interpretations of democracy that are essentially skeptical of the latter's capability for promoting just or reasonable policies and protecting liberty. One interpretation, for instance, is the electoral theory of democracy, which sees collective practices of decision making, especially electoral behavior, as methods characterized by an endemic paucity of rationality. Another interpretation is the deliberative theory of democracy, which integrates and somehow amends the minimalist definition of procedural democracy by making discursive justification the central task of participation.³⁹ Different as they are, these two interpretations converge in acknowledging an intrinsic lack of dispassionate evaluation in the democratic game of competing opinions for sake of electoral victory or majority decision. Not by chance, Pettit brings these two interpretations together when he wants to prove "how electoral interests can jeopardize the ideal of deliberative democracy."⁴⁰

Both interpretations refer to democratic decision-making processes in the same way democracy's critics have always referred to it since Greek antiquity. They stress majority rule, a characteristic that is after all pejorative, and try to elaborate strategies that can emend, narrow in scope, or complement it.

In modernity, democracy is often constructed as being concerned, in the first instance, with a voting rule for determining the will of the majority. [. . .] This reductive definition leaves democracy vulnerable to well-known social choice dilemma, including Downs' rational ignorance and Arrow's impossibility theorem: If democracy as a political system is reducible to a decision mechanism based on voting rule, and if that voting rule is inherently flawed as a decision mechanism, then (as critics have long claimed) democracy is inherently flawed as a political system.⁴¹

This seems to be Pettit's approach to democracy.

Pettit's project is the offspring of a low-profile conception of democracy that is familiar to students of public choice. "Electoral democracy may mean

that government cannot be wholly indifferent to popular perceptions about common interests [. . .] but it is quite consistent with electoral democracy that government should only track the perceived interests of a majority.”⁴² But Pettit’s view of democracy is also, and much more interestingly, the descendant of the republican tradition, whose relationship to the government of the many has been traditionally very ambivalent to say the least.

There is no need to go back to Cicero or Polybius to detect the antidemocratic spirit of republicanism (Athens “was always linked, in Polybius’ metaphor, to a ship without a captain, buffered by the winds of public opinion”⁴³). Rome and Athens represented, and continue to represent, two different models of politics and society. Rome, as John Dunn has recently written, gave us a large portion of our political vocabulary, from citizenship and constitution to republic and federation, but did not give us “the word *democracy*. [. . .] Not only is democracy not a classical Latin word. It is not a Roman way of thought. It does not express how the Romans (any of them as far as we know) envisaged politics.”⁴⁴ The renaissance of the Roman tradition in early Renaissance has reaffirmed and perfected the republican disbelief in democracy.⁴⁵ As Pettit observes, despite “later reconstructions of the tradition [of republican liberty] as Athenian in origin and as committed to one-eyed enthusiasm about democracy and participation, the tradition was essentially neo-Roman in character.”⁴⁶

Neo-Roman republican tradition means first of all the rule of law rather than of popular will; it means that politics is conceived in the negative, as checks and balances rather than in positive, as participation in the lawmaking process. In fact, Pettit quite rightly adds, republican “enthusiasm” for liberty coincides almost invariably with “distaste for the pure democracy represented in many minds by classical Athens.”⁴⁷ Those who love liberty as both noninterference and nondomination (that is to say liberals and republicans) cannot trust democracy because democracy is a political order fatally stuck between the proverbial rock of an oligarchic solution (representative system) and the hard place of plebiscitarianism (direct expression of people’s will by referenda but also election.)⁴⁸ Democratic institutions are fueled by the “politics of passion.” Pettit sees only one remedy for narrowing this defect: containing politics altogether while expanding deliberative fora and committees of experts, and moreover instituting adversarial practices of judicial contestation; solutions that are not democratic in character because they do not give priority to legicentrism or lawmaking. As Richard Bellamy has recently observed, Pettit offers a republican argument “for the substantive view of legal constitutionalism” as a counterbalance to political (as democratic) constitutionalism.⁴⁹ “Good law,” not simply legitimate law,

is the ideal of liberty as nondomination; responsiveness to the public and citizens' consent are not criteria of good law.⁵⁰

As I mentioned above, deliberative fora and committees of experts are meant to rectify democracy by reducing the function of parliaments to a final vote. When sensitive issues like crime, prostitution, drugs, and the like are under discussion, the politics of passion must be restrained, Pettit admonishes. This can be done by making parliament "appoint commission representative of relevant bodies of expertise and opinion, as well as of people as a whole, to oversee criminal sentencing" so as to take away from politicians and political parties topics they can easily be used to exploit popular prejudices and manipulate "aspirational morality." Parliaments must retain the ultimate control; but their final voting power should be on proposals that political representatives have not themselves discussed.⁵¹

Pettit advances here two important strategies of democracy containment. The first one consists in narrowing the function of parliament to a yes/no voting. This proposal echoes the prescription of silence that James Harrington and Rousseau imposed on popular assemblies, which they thought should neither initiate law proposals nor discuss the proposals coming from the council or the senate in order not to give voice to popular passions. *Divorcing deliberation from decision* is Pettit's first important strategy of depoliticization. It suggests that making parliaments into simply voting bodies would have the effect of cleaning democratic institutions of their natural flaw.

How can we not recall Rousseau's famous argument that giving voice to an assembly of people would fatally entail setting the floor for rhetoricians, with the consequence of making reason (and the general will) mute and powerless? Pettit's republic of reason belongs to the tradition of political rationalism and the devaluation of a humanist politics. Although he deems Machiavelli a pillar of the neo-Roman tradition, Pettit's depoliticized democracy goes against both the role of rhetoric in politics and against Machiavelli's defense of the deliberative ability of the *moltitudine*, "which all writers attack," to hold "well-ordered" public discussions before voting. Machiavelli praised Rome for allowing "a tribune or any other citizen" to "propose to the people a law, in regard to which every citizen was entitled to speak either in favor of it or against" so that "everyone should be at liberty to express his opinion on it, so that when the people have heard what each has to say may choose the best plan."⁵² The inspiration for Pettit's proposal of separating deliberation or discussion from voting seems to be Harrington rather than Machiavelli. Harrington thought that Sparta was a better and more secure republic than Athens because the Spartan senate had the power of deliberating and the assembly only resolving. "Pure democracy" was Harrington's name for a

commonwealth that did not keep debating and resolving separate. A similar view was expressed by Rousseau, who retained enough aristocratic spirit (his admiration for Roman republican was essentially an admiration for the senate) to question the deliberative capability of “a blind multitude.”⁵³ The dualism between *republic of reason* and *republic of passions* traverses the republican tradition, ancient and modern. This may be rendered as a dualism between *republic* and *democracy*, between a well-ordered system based on virtue and competence and a political order that has been always accused as being unable to protect the commonwealth from both partisan interests and great “storms” and anarchy.⁵⁴

Pettit’s second important depoliticization strategy consists in proposing a broad application of contestatory practices. These practices are like legal avenues through which citizens can monitor and challenge the outcomes of decision-making bodies through strategies that are purely procedural and nonpartisan, similar in kind to those that instantiate expertise decisions and judicial verdicts. Pettit applies the forensic form of reasoning and practice to political issues and reaches a conclusion that is consistently unpolitical. “In the legal case it is taken to be important, not just that judges be consistent, but that their judgments on the doctrinally prior issues dictate in consistency how they vote on the matter to be adjudicated.”⁵⁵ Collective inconsistency is a defect that democracy produces but cannot amend by itself. Indeed “contestability,” Pettit argues, is not a democratic strategy, but a strategy that the moderns have inherited from the republican tradition of constitutional discussions whose aim was that of rendering government’s interference nonarbitrary.⁵⁶ Within Pettit’s reading, liberty as nondomination does not belong to democracy, nor does the counterpolitics it promotes. Indeed, “to have more informal and more routinized procedures” of hearing and contestation is not for sake of more participation or “heroic debates” because their purpose is precisely that of depoliticizing the public arena. Contestatory democracy entails that “complaints” by ordinary citizens “should be heard away from the tumult of popular discussion and away, even, from the theater of parliamentary debate.”⁵⁷

The issue of whether the *negative power* of the people is a chapter in the history of republicanism or of democracy would be an interesting topic to discuss but is not what I can or want to do here.⁵⁸ It is sufficient to observe that in relation to democracy, contemporary neo-Roman republicanism plays the same role as liberalism after World War II. Whereas liberalism in the tradition of Isaiah Berlin accused democracy (positive liberty) of violating liberty as noninterference, republicanism in the neo-Roman tradition

(negative political liberty) criticizes it of not being able to make liberty as nondomination secure.⁵⁹

Quentin Skinner and other historians have shown that the long republican tradition did not embrace the positive concept of liberty, despite what Berlin and Constant may have suggested. In particular, they did not embrace a concept of liberty under which being free is just being part of a self-determining democracy; they did not embrace the liberty of the ancients, as Constant described it.⁶⁰

The charge against democracy as a positive liberty regime (thus exposed to the potential for tyrannical majorities) extends equally to direct democracy and representative democracy. Pettit excludes the possibility that referendum can be a safe practice of control against decisions made by elected bodies because plebiscitarian and direct democracy are regimes under which “the most capricious of powers remains morally as well as legally uncontestable.” But he does not think that representative democracy can be amended of its endogenous defect either, because while elections do away with the extemporaneous passions of the demos, they subject politics to fictitious opinions for sake of electoral victory and turn the entire society into a battleground of ideological partisanship. The question is that according to Pettit, representation and elections are the forms of politics most consistent with the “ethos of democracy,” which gives “people’s voice a certain morally social status.”⁶¹ As for representative democracy, although elections are a valid stratagem to neutralize people’s incompetence and irrationality, as Montesquieu argued early on, they fatally expose politics to manipulation and rhetoric. Much like direct popular assemblies, parliaments are unavoidably led by a majoritarian logic, poisoned by partisan passions and political parties.⁶²

It is the “republic of reason” not “the people’s voice” that is closer to competent deliberative and contestatory models of politics. In these models, liberty from domination is deemed more secure because the power of interference is stripped of its arbitrary potentials that both the collective principle of sovereignty (democracy’s “people” is “with the article” and refers to a collective) and majority rule unavoidably entail.⁶³ Hence, while he acknowledges that promoting contestation is crucial to narrow the domain and power of elected bodies, Pettit cautions that contestation is not a democratic device and in fact can be better organized if it is held by individuals before a court rather than by spontaneous groups of citizens in society. “I am prepared to concede that where members are very small, as in the judicial case, contestability can be achieved in significant measure at the individual

level.”⁶⁴ Whereas democracy’s legitimacy principle is consent (because the collective is the democratic agent, not the individuals), republicanism’s is “non-arbitrariness of interference,” from which the idea of contestability comes.

The non-arbitrariness of public decisions comes of their meeting, not the condition of having originated or emerged according to some consensual process, but the condition of being such that if they conflict with the perceived interests and ideas of the citizens, then the citizens can effectively contest them.⁶⁵

Judicial action is the model of the republic of reason, not parliamentary or assembly action. Judicial action is characterized by an unpolitical kind of impartiality and is a check on a specific behavior that translates into a specific decision. It is an action that operates case by case, and is not collective like democratic forms of political intervention by citizens (as both electors and representatives).

Judicial Judgment versus Political Judgment

The ideal of deliberation in contemporary democratic theory is more or less directly associated with a view of citizens as actors who in their authoritative political activity (voting) should “express their impartial judgments of what conduces to the general interest of all citizens” in a like manner as judges and juries.⁶⁶ Deliberation prefigures not only a quest for objective and dispassionate truth (the committees of experts model) but also, and above all, a quest for impartial judgment on certain given issues (the court decisions or jury model). Yet judgment in the courtroom is not the same as political judgment or judgment in parliamentary debates, in political campaigns, and even in the mind of the citizens when they go to the polls.

Political judgment has *generality* (the general interest of the political community at large) as its criterion. Judgment in justice aims instead at *impartiality* in evaluating a certain fact or a set of data or deeds. One crucial difference between these two forms of judgment is that the jury in the courtroom is not involved in the case under consideration in the way electors or representatives are (*nemo iudex in causa sua.*) But the actors who advocate their cause in casting a ballot or voting in a representative assembly are the same ones who pass judgment, and the political setting they belong does not institutionalize or command impartiality like the court. Jury and the courts (models of the unpolitical) are requested to pass judgment as *external* to the

case and their members are legally compelled to reason and act qua institutions not political actors (individual-citizens or representatives). The former wear the mask of the state (or the law) and must set aside their personal values and preferences. The latter wear the mask of the sovereign (the public) and are expected to be able to see their personal case through the lenses of the general interest to make laws that are not a direct expression of their private will or preference, yet not wholly opposite or indifferent to them either.⁶⁷

One may say that impartiality is a factor of ignorance (as freedom from opinionated knowledge) and of emotional independence from the case under judgment. The more the judge's mind is empty of personal opinions, the more the judge is in the right condition to impartially evaluate the case under judgment, as the law asks him to do (people who serve in a popular jury are instructed not to read newspapers or get information on the case under consideration from sources external to those that justice procedures provide).⁶⁸ But political deliberation *presumes* and actually *requires* that citizens and representatives are *exposed to* and actually contribute to forming a great variety of opinions, and moreover that they listen to all views that a free public sphere produces before they make up their mind and decide. Impartiality wants precisely the opposite of what a reasoned and good political deliberation requires.

In John Locke's formulation, judicial power is a true third power—it is impartial in the sense that it is *independent* from the judgment of the actors. This means that it must *not* be politically representative to be consistent with the idea of public reason as it is expressed impartially in the law. The judgment formulated by the judge is supposed to represent *not* the sovereign's political opinions *but only* the authoritative voice of the law. Hence it is and must be unpolitical. The judge depends on *the will* of the sovereign (the law) but should not depend on *the opinions* of the sovereign.⁶⁹ On the fact that the judge depends on and obeys only the law, but does not depend on the same source of the law as the lawmakers do (the opinion of the public), Montesquieu rested his case for justice as a *third power* as the condition for limited power, and moreover argued for the juridical power as truly *negative* and protective of individual liberty precisely because it was disengaged from “the individual opinion of a judge” as well as of the executive and legislative powers.⁷⁰ Unpolitical judgment means disengaged judgment, not judgment as a general or medium assessment among different views.

Since independence and constraint on getting information do not belong in political deliberation as they belong in the court, what kind of checks can political judgment tolerate to make decisions that reflect the general interest? The answer to this question casts light on the role of constitutional checks on

the legislative assembly: they are intended *not* to make lawmakers act impartially but to make them act *legitimately* and *responsibly*. As Frank Michelman has argued, lawmaking procedures are primed to produce “laws that are valid” *not* laws that are true.⁷¹ They aspire to a kind of impartiality that can never correspond to either the transparency of pure reason nor disembodied judgment, two qualities that both Pettit and Rosanvallon attribute to unpolitical modes of reasoning as peculiar to court-like checking bodies and committees of experts or deliberative advisory bodies. Yet in political settings, constraint on opinions appeals at most to the representative’s and citizen’s conscience, constitutional ethos, principles of morals, or even prudential reasoning (party loyalty or political calculus, as for instance the desire of a representative to be reelected.) In a word, it appeals to the ethical culture of participation and the educational potential that practicing democratic politics may have on citizens’ mind. Tocqueville’s dictum that democracy gets amended by more democracy exemplifies the pragmatic and process oriented character of democratic politics.

It is no news to say that, although procedures can head off conflicts and social disorder, their efficacy is largely dependent on ethical factors. This is true particularly in the case of representation because the mandate linking the representatives to their constituencies is essentially voluntary and politically constructed, but is not and cannot be legally binding. This makes representation a political praxis that “is not merely the making of arbitrary choices, nor merely the result of bargaining between separate, private wants.”⁷² Instrumental reasoning and compromise occur in the context of a common understanding about the political direction the country should or should not take, with the awareness that it is “not a reality that is objectively given to us in one way or another.”⁷³ Political judgment gets shaped within this pragmatic context, not outside or against it.

This brings us at the core issue of the specificity of political judgment. Political judgment aims at the general.⁷⁴ Broadly conceived, it is impartial in a way that the judgment performed by the judge is not—although the goal of both forms of judgment is consistency with the ideal of public reason. Yet the style in which the public reason speaks takes shape according to the institutional frame and task within which it operates. Certainly, no representative would dare to declare in public that his proposal supports or fosters some partial interests against the community’s.⁷⁵ The *presumption of generality* is essential to the moral legitimacy of political decisions, although contrary to justice procedures no legal enforcement can be tolerated for political deliberation to occur freely. Moreover, the presumption of generality belongs to a society in which political power is equally distributed and

the political society is seen as superior to the partial societies (interests and groups) it comprises.⁷⁶

Political judgment cannot do away with opinionated views; it cannot exist without ideal perspectives or situated views (views that are more or less distant from the ideal of the general or public reason), like any form of advocacy speech that pleads a cause in the name of democracy's "promises." However, political judgment produces arguments that appeal to justice; and it does so in two senses: because it refers to criteria of public interaction that all citizens presume and accept (decision-making procedures and the basic rights and principles contained in the constitutional pact); and because it refers or makes appeal to moral principles and ethical arguments that citizens recognize as part of their political language.⁷⁷ A democratic constitution is both a written document and an ethical document that lives in and throughout the ordinary life of the citizens as a guide to their public interaction and political judgment. The ideal of the general interest is a goal to be pursued by the political actors themselves, a never accomplished effort.

It may sound disturbing to conclude that partisan views are an essential component in political judgments that try to be consistent with the ideal of the general interest, rather than an unfortunate accident that good deliberation should wash out. In what sense can partisan views contribute to making general interests? When theorists identify the work of the assembly with that of the jury they overlook the important fact that while the trial's setting presumes that the final sentence is definitive, the deliberative setting is organized so as to produce decisions that can always be changed and revoked. Nothing is definitive in a political deliberation scenario whose presumption of legal changeability is its constitutive structure.⁷⁸ The permanent openness that any decision has in a free political community is the democratic answer to the proposal by democracy's critics from within who propose narrowing the domain of politics to make good and true decisions. Openness to revision, rather than the interruption or containment of democratic practices, is the democratic answer to unsatisfactory democratic decisions.

In concluding this critical analysis of the renaissance of the unpolitical in democratic theory, it may be useful to recall Aristotle's argument in *The Art of Rhetoric* on the difference between political deliberation and forensic decision. The former presumes that citizens holding different (and sometime conflicting) views on public issues seek what is *convenient or just for the whole community* and argue for or against by referring to cases or "evidences" that all citizens can understand and check, although they interpret them differently because their interests and opinions are different.⁷⁹ It is not by taking controversial issues out of political debate and making them the

issue of committees of experts or selected citizens that deliberation may serve the cause of democracy, but by keeping the processes of judgment and will formation open to scrutiny and revision, and the political arena open to competing political visions and political groups.

Notes

1. Thomas Mann, *Reflections of a Nonpolitical Man*, trans. with an introduction by Walter D. Morris (New York: Frederick Ungar, 1983), 16.
2. For a critical discussion of the several facets of relativism, see Steven Lukes, *Moral Relativism* (New York: Picador, 2008).
3. Mann, *Reflections of a Nonpolitical Man*, 169-70.
4. Massimo Cacciari, *The Unpolitical: On the Radical Critique of Political Reason*, ed. and with an introduction by Alessandro Carrera, trans. by Massimo Verdicchio (New York: Fordham University Press, 2009), 94. This echoes Joseph Ratzinger's criticism of democracy's presumption of making law substitute for the ethical good:

The majority principle always leaves open the question of the ethical foundations of the law. This is the question of [. . .] whether there is something that is of its very nature inalienably law, something that is antecedent to every majority decision and must be respected by all such decisions.

“That which Holds the World Together: The Pre-political Moral Foundations of a Free State,” in Joseph Ratzinger and Jürgen Habermas, *The Dialectic of Secularism: On Reason and Religion* (San Francisco: Ignatius Press, 2007), 60.

5. Bernard Yack, “Democracy and the Love of Truth” (manuscript paper to be published in a collective volume on *Truth and Democratic Politics* by the University of Pennsylvania Press).
6. For an overview of the counterrevolution ideology and its manifestation with different streams of antiliberal thoughts, cf. Stephen Holmes, *The Anatomy and Anti-Liberalism* (Cambridge, MA: Harvard University Press, 1993).
7. Joseph de Maistre, *Considerations on France* (1797), ed. Richard A. Lebrun (Cambridge, Cambridge University Press, 1994) chap. 7; Edmund Burke, “Reflections on Revolution in France (1790),” in *The Portable Burke*, ed. Isaac Kramnick (London: Penguin Books, 1999), 438-44.
8. Pierre Rosanvallon, *La contre-démocratie. La politique à l'âge de la défiance*. Paris: Seuil, 2006; Philip Pettit, “Depoliticizing Democracy,” *Ratio Juris* 17 (March 2004): 52-65; “Deliberative Democracy, the Discursive Dilemma, and Republican Theory,” in *Debating Deliberative Democracy*, ed. James S. Fishkin and Peter Laslett (Oxford, UK: Blackwell, 2003), 138-62.

9. Pettit, "Depoliticizing Democracy," 64.
10. Rosavallon, *La contre-démocratie*, 15.
11. Nancy Rosenblum, *On the Side the Angels: An Appreciation of Parties and Partisanship* (Princeton, NJ: Princeton University Press, 2008), 25-26.
12. Iris Young was among the first to criticize the rationalist vocation of deliberation (*Justice and the Politics of Difference* [Princeton, NJ: Princeton University Press, 1990, chap. 4]); but see also Bernard Yack, "Rhetoric and Public Reasoning: An Aristotelian Understanding of Political Deliberation," *Political Theory* 34 (2006): 417-38; Bryan Garsten, *Saving Persuasion* (Cambridge, MA: Harvard University Press, 2006); Linda L. Zerilli, "Response To Jon Simons," *Political Theory* 28, no. 2 (April 1, 2000): 279-84.
13. Chantal Mouffe, "Deliberative Democracy or Agonistic Pluralism?" *Social Research* 66 (1999): 745-58.
14. Pettit, "Depoliticizing Democracy," 59.
15. *Vigilance, dénonciation, and notation* are the three forms of the "pouvoirs de surveillance" that negative power puts in action; Rosavallon, *La contre-démocratie*, 15-21.
16. Early on, Michel Gauchet suggested a parallel between the judge (in the court) and opinion (in civil society) because both of them put in action a "permanent representation" of the sovereign while none of them wants to substitute to the ordinary powers of the sovereign, but wants simply to recall them that they must remain within the constitutional limits. *La révolution des pouvoirs. La souveraineté, le peuple et la représentation 1789-1799* (Paris: Gallimard, 1995, 43-36.
17. "Une telle défiance démocratique s'exprime et s'organise de multiples façons. J'en distinguerais trois modalités principales: les pouvoirs de surveillance, les formes d'empêchement, les mises à l'épreuve d'un jugement." Rosavallon, *La contre-démocratie*, 15.
18. *Ibid.*, 224.
19. Pierre Rosavallon, *La Légitimité démocratique. Impartialité, réflexivité, proximité* (Paris: Editions du Seuil, 2008), 354.
20. Hannah Arendt captured the political implications deriving from being a spectator and being an actor: the former entails impartial judgment, but the later is unavoidably partial; "only the spectator occupies a position that enables him to see the whole; the actor, because he is part of the play, must enact his part—he is partial by definition." *Lectures on Kant's Political Philosophy*, ed. with an interpretative essay by Ronald Beiner (Chicago and London: The University of Chicago Press, 1992), 55.
21. For a brilliant critical analysis of the myth of the independent citizen (not partisan), see Rosenblum, *On the Side of the Angels*, in particular chapter 7.
22. "Le populisme peut être appréhendé dans ce cas comme une forme d'expression politique dans laquelle le projet démocratique se laisse totalement aspirer et

- vampiriser par la contre-démocratie; il est la forme extrême de l'anti-politique." Rosanvallon, *La contre-démocratie*, 276.
23. On populism's antithesis to democracy, see Nadia Urbinati, "Democracy and Populism," *Constellations* 5, no. 1 (March 1998): 110-24; for a more benign understanding of populism, see Ernesto Laclau, *On Populist Reason* (London and New York: Verso, 2005).
 24. Rosanvallon, *La contre-démocratie*, 276.
 25. According to Bernard Manin, video democracy represented a new stage in the evolution of representative government, one in which partisanship would be replaced by more objective information. *Principles of Representative Government* (Cambridge, UK: Cambridge University Press, 2007), 228-29. I criticized Manin's interpretation in *Representative Democracy: Principles and Genealogy* (Chicago and London: the University of Chicago Press, 2006), 38-39.
 26. Damian Tambini, *Nationalism in Italian Politics: The Stories of the Northern League, 1980-2000* (London: Routledge 2001) chap. 3 and 4; Tom Gallagher, "Rome at Bay: The Challenge of the Northern League to the Italian State," *Government and Opposition* 27, no. 4 (2007): 470-85.
 27. Rosanvallon, *La contre-démocratie*, 263-68.
 28. *Ibid.*, 308.
 29. Philip Pettit, "Republican Freedom and Contestatory Democracy," in *Democracy's Value*, ed. Ian Shapiro and Casiano Hacker-Cordón (Cambridge, UK: Cambridge University Press, 1999), 163-90.
 30. Gene Rowe and Lynn J. Frewer, "Public Participation Methods: A Framework for Evaluation," *Science, Technology and Human Values* 25 (2000): 3-29. For an excellent critical overview of citizens panels, see Mark B. Brown, "Survey Article: Citizen Panels and the Concept of Representation," *Journal of Political Philosophy* 14 (2006): 203-25; Archon Fung, "Varieties of Participation in Complex Governance," *Public Administration Review* 66 (2006): 66-75; James Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven, CT: Yale University Press, 1995).
 31. Nadia Urbinati and Mark E. Warren, "The Concept of Representation in Contemporary Democratic Theory," *Annual Review of Political Science* 11 (2008): 387-412.
 32. Bruce Ackerman, *We the People: Foundations* (Cambridge, UK: Cambridge University Press, 1991), 181.
 33. Jane J. Mansbridge, *Beyond Adversary Democracy*, with a revised preface (Chicago and London: The University of Chicago Press, 1980), 248-51.
 34. Russell Muirhead, "Why Deliberative Democracy Needs Partisans," forthcoming in *Critical Review* (2009), pp. 24-25 of the manuscript.

35. Brown, "Survey Article," 8.
36. Fishkin has written that deliberative polls are a modern version of the ancient Athenian selection by lot (*The Voice of the People*, p. 169); for a counterargument, see Brown, "Survey Article," 9-10.
37. Pettit, "Depoliticizing Democracy," 56-57.
38. *Ibid.*, 54.
39. An interesting comparison has been proposed by David Miller, who shows how the deliberative ideal fulfills the promises of liberal-democratic institutions because, while it starts from the "premise that political preferences will conflict" and that the democratic institutions must resolve them, "it envisages this occurring through an open and uncoerced discussion of the issue at stake with the aim of arriving at an agreed judgment." Informal processes of discussion make procedural and institutional factors less central. "Deliberative Democracy and Social Choice," in Fishkin and Laslett, eds., *Debating Deliberative Democracy*, 183.
40. Pettit, "Depoliticizing Democracy," 57.
41. Josiah Ober, "The Original Meaning of 'Democracy': Capacity to Do Things, Not Majority Rule," *Constellations* 15, no. 1 (2008): 3.
42. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford, UK: Oxford University Press, 1999), 174.
43. Pettit, *Republicanism*, 167.
44. John Dunn, *Democracy: A History* (New York: Atlantic Monthly Press, 2005), 54.
45. Cf. Giuseppe Cambiano, *Polis. Un modello per la cultura europea* (Roma-Bari: Laterza, 2000), in particular chapters 1 and 2; J. G. A Pocock, *The Machiavelian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975), 100-03.
46. Pettit, *Republicanism*, 166.
47. *Ibid.*, 176.
48. Hence, liberal theorists of democracy, from Joseph Schumpeter to William Riker, have insisted in giving suffrage a mainly negative function that involves removal of leaders more than guiding politics.
49. Richard Bellamy, *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (Cambridge, UK: Cambridge University Press, 2007), 163-71.
50. Pettit adds an important caveat to his criticism: the enemy of liberty as nondomination and republican good government was born in the nineteenth century, with the theory of national sovereignty and the centrality of public opinion and parliamentary democracy. *Republicanism*, 182.
51. Pettit, "Depoliticizing Democracy," 54-55.
52. Niccolò Machiavelli, *The Discourses*, ed. Bernard Crick, trans. Leslie J. Walker (London: Penguin Books, 1970), 1:18 and 58.

53. James Harrington, *The Commonwealth of Oceana*, in *The Commonwealth of Oceana and a System of Politics*, ed. J. G. A. Pocock (Cambridge, UK: Cambridge University Press, 1996), 32-33, 24-25, 29, 143; Jean-Jacques Rousseau, *On the Social Contract: Principles of Political Rights*, in *Basic Political Writings*, trans. Donald A. Cress (Indianapolis, IN: Hackett, 1987), book 4, chap. 2.
54. The enmity of republicanism to democracy became particularly strong after and as a consequence of the French revolution; an antidemocratic republican was certainly Jean Charles Léonard Simonde de Sismondi (1773-1842) as one can see from his *Recherches sur les Constitutions des Peuples libres* written between 1796 and 1800 and whose first complete edition was edited by Marco Minerbi (Genève: Droz, 1965).
55. Pettit, "Deliberative Democracy, 145-46.
56. But also in the Leviathan the subjects have the legal right to sue the sovereign in a controversy over property, debt, or criminal law "as if it were against a Subject." My goal is to simply disclose the intriguing suggestion coming from Pettit's revision of the deliberative theory of democracy: extending deliberation and republican contestability would allow modern democracies to be more regulated and less political (hence also less democratic), but for this very reason less exposed to partisan arbitrariness, and thus more secure against the sovereign. Pettit's republicanism is not very far from Hobbes' formalism. Indeed, although according to Hobbes the scope of what the law "requireth," is under the control of the sovereign (and this gravely contradicts the neo-republican principle of making liberty secure, not simply legally defined), it is however certain that Hobbes argued that when the sovereign oversteps these bounds or can no longer fulfill its role, it is no longer legitimate; Thomas Hobbes, *The Leviathan*, ed. Richard Tucker (Cambridge, UK: Cambridge University Press, 1991), chap. 21.
57. Pettit, *Republicanism*, 196.
58. In *La contre-démocratie*, Rosanvallon reconstructs the history and institutional characteristics of the main controlling strategy, from the ancient tribunate to modern constitutional courts and central banks.
59. For a clarification on the role of the theory of liberty as nondomination in relation to democracy, see Pettit, *Republicanism*, 164-72. On the antidemocratic implications of neo-Roman republicanism, see John McCormick, "Machiavelli against Republicanism: On the Cambridge School's 'Guicciardinian Moments,'" *Political Theory* 31 (October 2003): 615-43.
60. Pettit, *Republicanism*, 166. For some recent critical appraisals of Pettit's theory of liberty, see Bellamy, *Political Constitutionalism*, 154-62; and Patchen Markell, "The Insufficiency of Non-Domination," *Political Theory* 36, no. 1 (2008): 9-36.
61. Pettit "Deliberative Democracy," 154.

62. Pettit, *Republicanism*, 179. Thus the target of Pettit's neo-Roman model of good government is not merely democracy but post-eighteenth-century representative democracy, a hybrid embodiment of several components, all of which potentially hostile to liberty: popular sovereignty, suffrage, and the electoral appointment of representatives; the lawmaking power of the parliament; party competition; and the manipulation of public opinion (pp. 182 and 198). Pettit's concern reminds us of Friedrich Hayek's about the natural tendency of democracy to become "unlimited" and the conviction that the conditions of liberty can be met "only by taking the powers of the decision out of the hands of democratic assemblies," whether representative or plebiscitarian; Friedrich A. Hayek, *Law, Legislation and Liberty*, vol. 1: *Rules and Order* (Chicago: The University of Chicago Press, 1973), 3.
63. Pettit, *Republicanism*, 174.
64. Pettit, "Deliberative Democracy," 156.
65. Pettit, *Republicanism*, 185.
66. Samuel Freeman, "Deliberative Democracy: A Sympathetic Comment," *Philosophy and Public Affairs* 29, no. 4 (2000): 375. (Freeman argues, convincingly, that the contrast between aggregative or interest-based voting and deliberative judgment is wrongly posed because, as Rousseau and Rawls have convincingly shown, assessing one's interests is not necessarily opposite to making judgments in the general interest, pp. 376-77). For a version of deliberation less unfavorable to party advocacy, see Amy Gutmann and Dennis F Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics and What Should Be Done About It* (Cambridge, MA: Harvard University Press, 1996), 135.
67. I discussed this issue at length in *Representative Democracy*, chapter 3.
68. This is the scheme followed by Rawls in depicting the mind of the individuals behind the veil of ignorance. Manin, *The Principles of Representative Government*, 349.
69. The judge cannot be representative of (the opinion of) the sovereign *because* he does not have himself the power to make the law and thus to resist the law—wherein it is evident that *opinion* is directly related to sovereignty or the sphere of political deliberation. This was in Tocqueville's correct opinion the main source of the difference between American and European systems and the fact that the former gave to judges an "immense political power" as the latter did not; Alexis de Tocqueville, *Democracy in America*, trans. J. P. Mayer (New York: Harper Perennial, 1969), 100-01. On the negative impact of political judgment (thus election) on "judicial integrity" of trial judges, see Gregory A. Huber and Gordon C. Sanford, "Accountability and Coercion: Is Justice Blind when It Runs for Office?" *American Political Science Review* 28, no. 2 (2004): 247-63; for an empirical analysis of the different methods of judgment by judges and political representatives, see Andrew Gelman, "Why Do Supreme Justice Drift Toward the

- Center?"<http://www.stat.columbia.edu/~cook/movabletype/archives/2005/11/why-do-supreme.html>.
70. Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, trans. Anne M. Choler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge, UK: Cambridge University Press, 1989), book 11, chap. 4 and 6.
 71. A "regime of lawmaking needs not, in order to be right, result in perfect just laws; rather, it needs only use procedures capable of producing laws that are valid." Frank Michelman, "How Can the People Ever Make the Laws? A Critique of Deliberative Democracy," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman, and William Rehg (Cambridge, MA: The MIT Press, 1997), 148. Rawls himself acknowledged this difference when he specified that it is essential to liberty that citizens and their representatives, unlike public officers, have only a moral not a legal duty to reason impartially: "I emphasize that it is not a legal duty, for in that case it would be incompatible with freedom of speech." John Rawls, "The Idea of Public Reason Revisited," in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999 [1997]), 577.
 72. Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), 212.
 73. Frank R. Ankersmit, *Aesthetic Politics: Political Philosophy beyond Fact and Value* (Stanford, CA: Stanford University Press, 1997), 47.
 74. Different as they were, both Jean-Jacques Rousseau and James Madison agreed that lawmaking is a work that consists in finding *minimum common denominator* among partial views or interests to dilute the extremes, rather than erasing or ignoring them. Rousseau, *On The Social Contract*, 155-56; "Federalist 10," in James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers*, ed. Isaac Kramnick (Harmondsworth, UK: Penguin, 1987), 57.
 75. Jon Elster, "Deliberation and Constitution Making," in *Deliberative Democracy*, ed. Jon Elster (Cambridge, UK: Cambridge University Press, 1998), 104. For an extremely useful analysis of the forms of judgment and rhetorical reasoning, see Chaim Perelman, *Justice, Law, and Argument: Essays on Morals and Legal Reasoning* (Boston: Reidel Publishing Company, 1980), 59-66.
 76. The grammar of egalitarian societies seems to accentuate predicates, evaluations by the subject, whereas the language of hierarchic societies would be evocative, its grammar and syntax would have a magic quality . . . In an egalitarian society language belongs to everybody and evolves quite freely; in a hierarchic society it congeals. Its expressions and formulas become ritual and are listened to in a spirit of communion and total submission.
- Chaim Perelman and L. Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, trans. John Wilkinson and Purcell Weaver (Notre Dame, IN: University of Notre Dame Press, 1971), 164.

77. On the “perspectival” nature of political judgment, see Norberto Bobbio, *Left and Right: The Significance of A Political Distinction*, trans. with an introduction by Allan Cameron (Cambridge, UK: Polity Press, 1996), 1-17.
78. Manin, *The Principles of Representative Government*, 183-92.
79. Aristotle, *The Art of Rhetoric*, trans. John Henry Freese, The Loeb Classical Library (Cambridge, MA: Harvard University Press, 1994), 33-47.

Bio

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