

# **Public Opinion, Happiness, and the Will of the People: Policy-making in a Democracy\***

DR HENRY S RICHARDSON

Democracy is a form of rule by the people. I begin by making a case for this fundamental proposition. I then look at two tempting ways of misunderstanding rule by the people—namely, thinking of the people’s views via the idea of opinion polls or via the idea of making the people happy. In a democracy, the people’s will must be continually forged through the democratic process. A difficult challenge to achieving democracy, so understood, is how to reconcile this insistence on rule by the people with governments’ reliance on complex, expert bureaucracies to do much of their policy-making work. I close with some constructive suggestions about how happiness indices might be used to guide policy-making in a way that aids democracy rather than furthering elite, bureaucratic rule.

## **Democracy as Implying Rule by the People**

Any careful attempt to reconstruct the ideal of democracy, as it is currently understood, will disclose that it is a rich tapestry woven from many distinct threads. Although different nations, with their different traditions, will weave in other ideas as supplementary warp or supplementary weft, giving their own interpretation of democracy a distinct character, I believe—have argued at length elsewhere—that there are five central strands to the idea of democracy, strands that are necessary both to distinguishing democracy from other forms of

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government and to capturing crucial conditions of any legitimate government.<sup>1</sup>

Let us begin, then, from the thought that the exercise of governmental power is illegitimate unless it is democratic.<sup>2</sup> To say this is not to imply that democracies can do no wrong, for it indicates only that democracy is an important necessary condition of legitimacy. Why is there any special issue about governmental legitimacy in the first place? The problem arises from how governments impinge on individuals' freedom. We do not need to agree on any controversial understanding of individual freedom to recognise that governments impinge on it. They do so by telling individuals what they must do—that they must pay certain taxes, refrain from doing certain things that damage the natural environment, obey certain trade regulations, and so on—and by credibly threatening them with sanctions if they do not obey. Importantly, these government actions do not merely limit people's options or shift their incentives: they also already restrict individuals' freedom simply by purporting to impose duties on them. Because governments thus impinge on freedom, they come under a special burden of legitimation.

The ideal of democracy answers to this burden, indicating how governments must be structured if they are to impose duties of this kind legitimately. "The basic case" for democracy, as we might call it, resides in the following thought: Democracy meets this burden of legitimation by combining two normatively significant ideas: (a) the idea that laws and policies must not be simply arbitrary but must be based on reasons, and (b) the idea that the process whereby reasons are brought to bear on lawmaking must be structured so as to assure equal concern and respect for each citizen. Utilising majority rule to yield a decision following an exchange of reasons is a saliently reasonable way to unite these two elements, and counts as a rudimentary idea of

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<sup>1</sup> See Richardson, Henry S., *Democratic Autonomy: Public Reasoning about the Ends of Policy* (N.Y.: Oxford University Press, 2002). Parenthetical page references in the text will be to this book.

<sup>2</sup> The remaining paragraphs in this section are adapted from Richardson, Henry S., "Précis," *Philosophy and Phenomenological Research* 71 (2005): 187-195.

democracy.<sup>3</sup> This basic case for democracy already limns a conception that distinguishes democracy from a pure monarchy (which contains no inherent check against arbitrariness) and aristocracy (which is incompatible with a fundamental commitment to respect for all as free and equal citizens).

This basic case for democracy is quite abstract – too abstract to describe a fully recognisable conception of democracy. It tells us too little about the processes wherein reasons are to be exchanged and whereby items for majority decision are to arrive on the agenda. To arrive at a more satisfactory interpretation of democracy, we need to enrich this basic lesson by integrating within it four important strands: republican, liberal-egalitarian, populist, and rationalist. These strands represent, respectively, the values of freedom as non-domination, equal basic liberties, and, in the case of the last two, respect for autonomy.

The modern national democracies have all been republics, forms of government that centrally rely upon institutional ways of separating powers and allowing checks and balances among them. Historically, not all republics have been democracies. The western idea of a republic originated in ancient Rome, where it was conceived as a “mixed” form of government, pitting the different classes of society against one another via differentiated ways of representing them and allowing them to contest decisions. Niccolò Machiavelli’s *Discourses* celebrated the ancient Roman republics as having helped preserve the “liberty” or “freedom” of the Romans by dividing rule in such a way as to help block domination by any one person or group.<sup>4</sup> Many cultures have doubtless developed similar ways of institutionally dividing power. Among these, we could include the *gana-sanghas* of ancient India, into one of which the Buddha was born.<sup>5</sup> As both of these cases illustrate,

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<sup>3</sup> May’s theorem indicates one way in which majority rule is saliently reasonable in such a context.

<sup>4</sup> Republics, understood in this way as mixed constitutions, were celebrated by Niccolò Machiavelli as having helped preserve the “liberty” or “freedom” of the Romans: see his *Discourses on the First Ten Books of Livy*, Book I, chap. II and *passim*.

<sup>5</sup> Cf. Sil, N. P., *Kautilya’s Arthashastra: A Comparative Study* (N.Y.: Peter Lang Publishing, 1989), p. 82.

having institutions for dividing and checking power does not imply that power is divided equally, that the people are widely enfranchised, or that the government lacks aspects of monarchy or aristocracy.

What, then, does the republican strand contribute to the ideal of democracy? Philip Pettit's work, which reconstructs the ancient Roman conception of republicanism, helps us understand what this conception adds to the ideal of democracy.<sup>6</sup> Pettit's signal contribution to the republican tradition has been to articulate a systematic philosophical basis for it in its idea of freedom as non-domination. Both civic virtue and contestatory institutions are crucial means to seeing to it that no one may use governmental power to dominate others. On Pettit's illuminating analysis, this implies, more particularly, that by these means, governments are prevented from having the capacity arbitrarily to interfere with our lives, for one is dominated whenever another has such a capacity. Freedom as non-domination, so understood, is a value at the heart of modern democracies. It links up with the elemental idea of freedom at the core of the basic case for democracy, and does so in a way that aptly leaves open the possibility that democratic government might be legitimate. It will be, if there are reliable mechanisms assuring that its interferences with freedom are not arbitrary. But what does it mean for interferences not to be arbitrary?

To begin with, we should recognise that this issue about the meaning of arbitrariness here arises within the context of making law and making policy, and so presupposes the idea of the rule of law. In the famous chapter "Of the Constitution of England" in *The Spirit of Laws* (1748), Montesquieu described freedom from domination in terms that were rather too broad. "The political liberty of the subject," he wrote, "is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another."<sup>7</sup> Unfortunately,

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

<sup>7</sup> Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws*, translated by Thomas Nugent, revised by J. V. Prichard (London: G. Bell & Sons, 1914), rendered into HTML and text by Jon Roland of the Constitution Society and

however, no constitutional arrangement can suffice completely to erase the grounds we can have to fear others. What Montesquieu should be taken to mean is that the constitution should so restrain governmental power that no one should have to fear its arbitrary use. Yet again, no constitution can make us proof against the possibility that some rogue military officer will seize control, Dr Strangelove style, of some military units and use them in fearsome ways. So again we must set aside an overly literal or absolute reading of the relevant freedom from fear. What a constitution can do is to so constrain things so that no such fearsome actions can count as having the force of law. The constitution can limit what counts as even purporting to impose any duties on anyone. Thus, the central form of arbitrariness to be avoided is arbitrariness in purporting to impose duties on people.

Noticing this, we may say that, in order to be non-arbitrary, any government interferences must be guided by the public good. Yet this answer is not particularly informative, for the notion of the public good is too highly contested to be of much use. In searching for an adequate understanding of non-arbitrary interference, we are simultaneously searching for a viable conception of the public good. That is worth remembering, but it will not much help us towards an appropriate interpretation of non-arbitrariness. I have elsewhere pursued this question in depth; here, I simply summarise my results.<sup>8</sup> I think that we ought to reject objectivist and welfarist interpretations of non-arbitrariness and instead adopt a more procedural, liberal interpretation. On an objectivist reading, interferences are non-arbitrary if they are based on sound reasons. Understanding an insistence on non-arbitrariness, as we are, as the central contribution of republicanism to democratic theory, we must reject this interpretation. There are two main reasons. First, an objectivist reading of non-arbitrariness would be compatible with a thoroughly undemocratic form of Platonic Guardianship by an epistemic elite. Accordingly, this interpretation of arbitrariness has no place in an effort to elaborate the ideal of democracy. Second, objectivism about the reasons for government action fails to take sufficiently seriously the deep

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available at <http://www.constitution.org/cm/sol.txt> (accessed 11 November 2009), Book 11, chap. 6.

<sup>8</sup> See my *Democratic Autonomy*, chap. 3.

disagreements about what is good and what is bad that are common in almost all societies and that may be expected in any society that properly respects individual freedoms. Whether a given proposed limitation of liberty by government is well-grounded in objective reasons is sure to be controversial in many cases. Accordingly, objectivist standards of arbitrariness are not well suited as a public basis for legitimising democratic legislation.<sup>9</sup>

Welfarist readings of non-arbitrariness are more promising. Three versions of a welfarist reading are worth taking particularly seriously: one that conceives the public good in utilitarian fashion as an aggregative function of individuals' welfare; one that insists, with public choice theorists or with Jürgen Habermas, on unanimity; and one that draws, like Jean-Jacques Rousseau, on a generality filter. Each of these suffers from a fatal difficulty. Here, I confine myself to stating what these difficulties are. A utilitarian reading of non-arbitrariness fails to rule out what would count, intuitively, as paradigm cases of domination, for it supports the idea of sacrificing the welfare of some for the benefit of society at large. Those, whose welfare is sacrificed, without their consent, are dominated by the majority even if, as a result, there is a gain in the aggregate happiness. What, then, about unanimity? The problem with a unanimity requirement is that it imports an unacceptable bias in favour of the status quo, blocking any legislation or policy that would change it unless all can agree upon it. Far from counting as a plausible implementation of the ideal of non-arbitrariness, a unanimity requirement perpetuates the arbitrarinesses (and injustices) of history that produced the status quo. As to generality filters—the third promising way of implementing a welfarist interpretation of the republican ideal of non-arbitrariness—there is a dilemma. Formal versions of a generality filter will be toothless, while

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<sup>9</sup> Does the Gross National Happiness approach, as it has been elaborated in Bhutan and elsewhere, avoid this problem? At this level, I am inclined to think that it does not. Note that the concern here is with determining which interferences with liberty may be legitimate. Hence, there will be a decrement on liberty on one side of the ledger, to be compared to an improvement in national happiness in some other respect. Whether a GNH approach is well suited to assessing such difficult trade-offs is something I will discuss further in the penultimate section.

substantive ones will be impossibly constraining. Formal versions simply demand that an argument for interfering be recast in terms that purport to appeal to general interests—just the mechanism that Marx saw at the root of political ideology. Substantive ones, which insist that the interests of each be met by every policy, are too limiting, for too many of the policies that we ought to pursue—in transportation, education, public health, and the like—will have losers as well as winners.

As I mentioned, the republican ideal of non-arbitrariness insists on some kind of connection between government interferences with liberty and the public good. The interpretations of non-arbitrariness that I have just quickly canvassed are also, implicitly, interpretations of the public good. Whereas Pettit himself seems to be drawn to some sort of welfarist reading of the public good,<sup>10</sup> I have elsewhere argued against this.<sup>11</sup> Instead, I have argued for a distinctively liberal, proceduralist reading of the related ideas of non-arbitrariness and the public good, according to which “political power is nonarbitrarily used when it is constrained to operate within a set of fair procedures that respects persons as free and equals and provides adequate protection for their fundamental rights and liberties”. In other words, my claim about republicanism is this: The best interpretation of the republican ideal of non-domination—at least for purposes of capturing what republicanism contributes to democracy—is a specifically liberal interpretation of non-arbitrariness, one that emphasises the importance of governmental procedures unfolding in ways that respect certain basic liberties. These will have to include the political liberties, interpreted in a way that is sensitive to the ways that inequalities of wealth and of power can undermine what John Rawls calls the “fair value” of the political liberties. As he puts it, “[t]his guarantee [of the fair value of the equal political liberties] means that the worth of the political liberties to all citizens, whatever their social or economic

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<sup>10</sup> Pettit, Philip, “Democracy, Electoral and Contestatory,” in Shapiro, Ian and Stephen Macedo, (eds.), *Designing Democratic Institutions* (N.Y.: New York University Press, 2000): 115-144; Pettit, Philip, “The Common Good,” Dowding, Keith, Robert E. Goodin and Carole Pateman, eds., *Justice and Democracy: Essays for Brian Barry* (Cambridge, England: Cambridge University Press, 2004): 150-69.

<sup>11</sup> See my *Democratic Autonomy*, chap. 3.

position, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold public office and to influence the outcome of political decisions.”<sup>12</sup> The suggestion I am defending, then, is that the best interpretation of the republican demand for non-arbitrariness in any governmental imposition on liberty is one that insists that the laws derive from a process that respects the basic liberties of all individuals, including the fair value of their political liberties.

Let me review where my discussion has carried us thus far. Democracy on any understanding is rule of the people: this distinguishes a democratic constitution from a monarchical or aristocratic one. The basic case for democracy articulates this fundamental idea. Beyond this, integrating some understanding of the public good within our understanding of the democratic ideal is necessary to articulating how democracy is also a form of rule for the people. My contention is that a liberal-republican interpretation of the public good gives us a useful sense in which democracy is rule for the people, one that incorporates the important republican ideal of non-domination.

As you see, I am being guided by Abraham Lincoln’s pithy characterisation of democracy as “government of the people, by the people, for the people.”<sup>13</sup> Missing from my reconstruction, so far, is what is at once the most distinctive and the most elusive element of democracy, so characterised: the notion of rule by the people. Widely shared values dictate that legitimate government in general, and democracy in particular, must be a form of rule by the people, and not simply a kind of benevolent rule on their behalf. One of the great attractions of democracy is that it allows the people an active hand in law-making, rather than simply generating laws (via non-monarchical and non-aristocratic processes) that promote the public good. The normative importance of this active role for the voices of the people may be confirmed by contrasting democracy with what would be, in other ways, a fair procedure for controlling lawmaking, namely a purely random one—one that selected either policies or, alternatively,

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<sup>12</sup> Rawls, John, *Political Liberalism*, rev. (ed.) (N.Y.: Columbia University Press, 1996), p. 327.

<sup>13</sup> Abraham Lincoln, Gettysburg Address.



weekly rulers, or a random basis. Whatever might have been said in ancient Athens, a form of rule that relies in such a central way on random devices is no longer an acceptable interpretation of democracy.<sup>14</sup>

Why not? We may concede that random selection of rulers or of policies is impartial and so is, in one way, fair. By such means, political processes may be made relatively impartial in their responsiveness to individuals' well-being. What random processes do not at all succeed in implementing, however, is the equal agency of each citizen.<sup>15</sup> In a democracy, citizens are to be agents of their collective action, not merely the passive beneficiaries of government's efforts on their behalf. Only when citizens do play an active role in governing themselves does their regime count as a case of rule by the people; and only then is it a democracy in any complete sense.

In reconstructing the ideal of democracy, then, we must strive to explain how it can be a form of rule by the people. Call this "populism." Any serious interpretation of rule by the people must accept populist talk of "the will of the people." Talking this way does not entail any metaphysically dubious propositions about the body politic. We do not have to think of the polity as a person in order to speak meaningfully of the will of the people. Yet if we should resist the idea that the polity is a person, we should simultaneously avoid being driven to a form of methodological individualism that would neglect the importance of institutional forms. Kenneth Arrow's impossibility theorem showed just how hard it is to conceive of the popular will as an abstractly emergent property of the set of individual wills.<sup>16</sup> As I have

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<sup>14</sup> I recognise that random selection of rulers was an important element in the democracy of ancient Athens. An important lesson of my characterisation of the ideal of democracy in the text is that this ideal has progressed considerably beyond this primitive starting-point.

<sup>15</sup> Starting systematically with "Well-being, Agency, and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 82 (1985): 169-221, Amartya K. Sen has emphasised that we should recognise that agency has a normative significance parallel to that of well-being. See also Sabina Alkire's contribution to this volume.

<sup>16</sup> Arrow, Kenneth J., *Social Choice and Individual Values*, 2<sup>nd</sup> (ed.) (New Haven: Yale University Press, 1963). As Michel Balinski's contribution to this volume

argued at length elsewhere, the will of the people, we must recognise, arises, it at all, not as some abstract “function” of individual wills—as envisaged by Arrow’s style of social choice theory—but as the concrete product of fair democratic procedures, as actually realised in, and distributed across, a broad range of concrete institutions.<sup>17</sup> Popular sovereignty, on this proposal, is to be thought of as institutionally distributed. The point of speaking of the will of the people, on such an interpretation, is obviously not to put oneself in a position of criticising particular policies as diverging from the people’s will; rather, it is to enable to one to explain, more generally, what it takes for a government to be by the people.

On the republican-liberal-populist interpretation of democracy thus far reached, forms of collective reasoning might well be seen to be very useful. Collective reasoning is important as means of contesting

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well illustrates, there are creative methods of voting that can circumvent Arrow’s paradoxes. I by no means wish to deny this. In the text, I simply wish to register some skepticism about any claim, on behalf of such a method, that it better captures the people’s will than some other method. My point is that there is no access to the content of the people’s will except via a legitimately established set of democratic procedures. Creative proposals such as Balinsky’s bear on how to design such procedures so that they are relatively immune to manipulation and so that they yield coherent results. Without actual democratic procedures that are at least somewhat conducive to coherent results, however, the people can have no will; and using different actual procedures their will will have different content. Hence, one should avoid claiming as a virtue of such a procedure that it better reflects or represents the people’s will, as if this could or did exist independently of any such procedure.

<sup>17</sup> See my *Democratic Autonomy*, chap. 4. An implication of the interpretation of the will of the people offered here is that democracies cannot be founded in the first instance as expressions of the will of the people. Some have seen paradox for populist, deliberative democracy in this fact that democracies cannot be democratically founded: see, e.g., Michelman, Frank, “How Can the People Ever Make the Laws? A Critique of Deliberative Democracy,” in Bohman, James and William Rehg, (eds.), *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass.: MIT Press, 1997), pp. 145-71. I would prefer to say that populism, rightly conceived, does not imply that democracy must have a democratic basis: cf. *Democratic Autonomy*, pp. 67-8. Hence, on my view, there is nothing normatively suspect in the fact—if it is a fact—that Bhutan’s democracy was a gift from its king.

arbitrary policies and channeling popular input. Collective reasoning is hence a means to important democratic ends. In addition, however, there is a deeper basis for holding that a democracy must centrally involve collective reasoning, one that implies that collective reasoning is morally required, independently of anything else it results in. The basic case for democracy, from which I began, teaches that laws and policies must be based on reasons. As we go about ruling ourselves, a mutual respect for one another as free and equal citizens requires that we offer reasons to one another in support of the laws and policies that we each favor. A democracy needs to foster such collective reasoning, not merely as a useful way to achieve something else, but also as a required way of implementing the mutual respect of citizens as free and equal individuals. Call this the “rationalist” strand of the ideal of democracy.

The ideal of democracy, then, has republican, liberal, populist, and rationalist strands. There is one more — an egalitarian strand — but I pass that one by here without further comment, as the first four suffice for purposes of this essay. Above, I have emphasised the importance of including the populist strand; but it is also important to note that this compound conception of democracy provides a principled basis for correcting and limiting the populist strand. To see how, consider the early, immoderate version of populist democracy put forward by Jean-Jacques Rousseau in his classic work, *The Social Contract*. In that work, Rousseau’s name for the will of the people was the *volonté générale*, the general will. He made two radical claims about the general will that have, ever sense, made students of democracy nervous about populism.<sup>18</sup> The first is that obedience to the general will is perfect freedom and the second is that the general will is infallible.<sup>19</sup> A sensible populism, even developed on its own, will simply refrain from making either of these two radical claims. A populism developed in combination with the other strands set out above will necessarily reject the suggestion that freedom boils down to obeying the will of the people. It is true that, in a legitimate democracy, citizens will not be

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<sup>18</sup> See, e.g., Riker, William H., *Liberalism against Populism: a Confrontation between the Theory of Democracy and the Theory of Social Choice* (Prospect Heights, Ill.: Waveland Press, 1988), esp. chap. 1.

<sup>19</sup> Rousseau, Jean-Jacques, *The Social Contract and the Discourses*, trans. By G. D. H. Cole (NY: Dutton, 1973), I.vii, p. 177; I.viii, p. 178; and IV.ii, p. 250.

subject to domination, even when government restricts their freedom of action, for these restrictions will have arisen from a non-arbitrary process. Yet the basic case for democracy with which I began implies that there is a more basic sense of freedom that is in play whenever people's freedoms are restricted by legal restrictions, however just. Hence, no form of obedience is compatible with perfect freedom. Similarly, a populism developed in conjunction with the rationalist strand will necessarily reject the claim that the people's will can be infallible, and instead will insist that the popular will can make mistakes about what ought to be done. The reason for this in brief, is the following.<sup>20</sup> Offering one another reasons in democratic discussion requires that we take ourselves to be addressing a question that is subject to true or false answers, such as the question, "what should we do (about X)?" And human beings are always fallible about what is true or false. Hence, a rationalist populism cannot coherently accept the suggestion that any product of democratic deliberation could be infallible. It follows that Rousseau's immoderate claims about the will of the people are not only optional for a populist conception of democracy but are actually ruled out by the compound conception of democracy at which we have arrived.

To insist in this way on a sober and sensible understanding of the will of the people, however, does not make it easy either to explain what the people's will is or to figure out how to ensure that the process of policy making reflects the people's will. Before coming to the crucial, modern challenge to implementing the democratic ideal of rule by the people - namely, our unavoidable reliance on bureaucratic agencies to play a large role in lawmaking - I want to discuss two tempting but dangerous shortcuts that many democratic theorists take when talking about the will of the people. The first of these attempts to invoke the idea of an opinion poll, albeit of an idealised kind, to characterise the will of the people. The second invokes the idea of the general happiness to characterise the will of the people. I will argue that each of these shortcuts, though attractive, leads people seriously astray.

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<sup>20</sup> Here I abbreviate the discussion of this point in my *Democratic Autonomy*, chap. 5.

### **The Subsidiary Role of Opinion Polls and the General Happiness**

The mistakes I have in mind arise only when one fetishises either opinion polls—ordinary or idealised—or the idea of the general happiness, and thus takes one or the other of them as indicating more about the will of the people than it in fact does. Each of these ideas, in its proper place, is tremendously useful. The idealised opinion polls I will be discussing represent a real advance over ordinary opinion polls. Multidimensional assessments of gross national happiness represent a real advance over measuring progress in terms of gross domestic product. Understanding democracy as a form of rule by the people, however, implies that each of these ideas, useful as they are, should have only a subordinate place in democratic deliberation about what we should do. Well-conducted democratic deliberation, I will be suggesting, must be both rationally disciplined and practically intelligent. Taking opinion polls—even idealised ones—as indicating the content of the people’s will undercuts rational discipline. Seeing measures of gross national happiness as bypassing the need to forge the people’s will on specific issues is a threat to practical intelligence. The first of these ideas, I will argue, overlooks the fact that one who is not empowered to act cannot meaningfully form a resolution about what to do. The second of these ideas, I will argue, overlooks the fact that intelligently resolving what to do in any practical circumstance requires rethinking what one cares about. Those who elevate opinion polls to a central role in democracy implicitly rest too much hope in republican institutions, while those who elevate an appeal to the general happiness to the status of a fundamental standard of action rest too much hope in potentially elitist, technocratic solutions. I have nothing against either opinion polls or the idea of the general happiness, as long as these ideas are confined to their proper places. Those who are tempted to fetishise these ideas, however, rest more weight upon them than they will bear. We need to recognise that for democracy to be a form of rule by the people, the people must be empowered to decide policies via procedures that empower them to exercise their practical intelligence.

## **Opinion Polls and Republican Hopes<sup>21</sup>**

Opinion polls, as ordinarily understood, are simply helpful tools for politicians seeking election or re-election and for lawmakers as they debate alternative policies. These perfectly apt uses of opinion polls are not worth debating in the context of a fundamental examination of democracy. I would not mention them, except that some theorists invest them with a greater importance. An unfortunate tendency to fetishise opinion polls is found, for instance, in James Fishkin's work on what he thinks of as "deliberative democracy." In his work, the principal tool is his trademarked idea of a "Deliberative Poll." To generate a Deliberative Poll, randomly selected groups of citizens are gathered for a day or two of discussion. The groups are provided briefing books and expert talks and are given opportunities to discuss matters among themselves. Fishkin administers questionnaires—one before the meeting and one at the end of it. The first such meeting to be nationally televised was held in 1994 in Manchester, England, where the issue discussed was how to respond to rising crime. As later analysed by Fishkin and his colleagues, this discussion led to a reduced willingness to impose harsh prison sentences, stronger commitment to the importance of defendants' procedural rights, and a diminished tendency to want to fight crime simply by adding more police officers.<sup>22</sup> Now, these results are interesting and important; but precisely because they are, we must be cautious about what they indicate about the people's will. Here, the target of my criticism is the thought, latent if not explicit in the work of Fishkin and others, that the proper way to conceive of the will of the people for the purposes of normative democratic theory is to ask, what conclusions would the people reach if they were better informed about the issues and had the opportunity and motivation seriously to debate and discuss them?<sup>23</sup> I will call this

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<sup>21</sup> This sub-section summarises the main argument of my "Public Opinion and Popular Will," forthcoming in Kahane, D., et al., (eds.), *Realising Deliberative Democracy* (University of British Columbia Press, 2009).

<sup>22</sup> Luskin, Robert C., Fishkin, James S., and Jowell, Roger, "Considered Opinions: Deliberative Polling in Britain," *British Journal of Political Science* 32 (2002): 455-87.

<sup>23</sup> Cf. Fishkin, James S., *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1995), 162. I have presented this Counterfactual Question in a slightly more portentous form than Fishkin does

the Counterfactual Question. The point of addressing this question is not predictive, but prescriptive. “It has a recommending force,” as Fishkin puts it.<sup>24</sup> There is an unobjectionable and modest way of conceiving of its normative force and an objectionable and ambitious one. Fishkin is explicitly committed to the unobjectionable and relatively modest claim that, on a given policy question that has arisen (in, we presume, a legitimate political setting), his Deliberative Polls provide more normatively significant information than do ordinary opinion polls.<sup>25</sup> I have no quarrel with this relatively modest claim. Latent in some of Fishkin’s writings, however, is a stronger and more ambitious claim, to the effect that the Counterfactual Question provides a way of conceiving of the will of the people and that, correspondingly, Deliberative Polls provide a way of getting at the content of the will of the people. This is to think of the Counterfactual Question as having fundamental normative importance. That is a mistake.

The reason why this is a mistake is both simple and fundamental. True deliberation, as Aristotle taught, involves choosing among possible alternatives. Politics is proverbially honoured as being “the art of the possible.” Central to this art, however—as to any deliberation—is making difficult compromises. One must often be willing to give up some things that one cares about in order to achieve others. It is always very difficult for us human beings to make such choices. What is nearly impossible for us to do, however, is to make difficult choices in a situation in which we are not actually empowered to choose. To practice the art of the possible is to face the discipline of the impossible. Those answering a pollster’s question are not subject to this kind of discipline. To illustrate what I mean, consider how a question about going to war (or raising military spending) might interact—or fail to interact—with a question about cutting taxes. It is reasonable to think that one ought not to undertake a major war without being willing to

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there by referring to “the people” instead of simply “people.” Given Fishkin’s insistence on gathering a statistically representative sample of the relevant population as participants in these deliberative events, it does appear that he has the people in mind, and not just any old group of individuals.

<sup>24</sup> *Ibid.*

<sup>25</sup> I will capitalise the term “Deliberative Poll,” using it to refer only to Fishkin’s trademarked version of this idea.

pay for it. It is generally irresponsible to make major new tax cuts when undertaking a major war. An opinion poll raising questions about going to war and about whether to cut taxes, however—even a deliberative one—introduces no serious practical pressure for those responding to avoid this kind of irresponsibility. Because those responding have no power—no responsible office—they are free to express mere wishes. The political process should not be guided by citizens’ mere wishes.

To be sure, the briefing materials presented to participants in a Deliberative Poll might highlight the irresponsibility of going to war while cutting taxes. Alternatively, some of the participants might mention this over the course of the weekend’s discussion of the issues. Even so, because of the lack of the kind of discipline that is enforced by being both empowered and required to generate a collective decision, the problem of irresponsibility remains at the collective level. To see this, consider a variant of Philip Pettit’s “discursive dilemma.”<sup>26</sup> Consider three people with the following preferences:

	Should we go to war?	Should we cut taxes?	Can we responsibly go to war?
Person One	Yes	Yes	No
Person Two	No	Yes	No
Person Three	Yes	No	Yes

In this situation, each individual has fiscally disciplined bottom-line views: none of them would wage a war without paying for it. It does not follow, though, that as a group they are fiscally disciplined. If the group is asked the question, “Should we go to war?” its majoritarian answer is that we should, even though a majority would cut taxes. The electoral sanction can pressure an actual legislature towards collective

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<sup>26</sup> Pettit, Philip, “Deliberative Democracy and the Discursive Dilemma,” *Nous* (2001) Suppl. Vol. 11: 268-99.



discipline of this kind. Because it is not constituted as a body that will make decisions it will later be held accountable for, however, a sample of people gathered for a Deliberative Poll has no such incentive for collective discipline, whether fiscal or more broadly pragmatic.

A more disciplined approach to this particular pair of concerns could be added exogenously to the Deliberative Poll by the experts conducting it. They could ask, not “should we go to war?” and “should we cut taxes?” but “should we simultaneously go to war and cut taxes?” Yet there are two reasons this maneuver is inadequate. First, the discipline it achieves is supplied by the experts, not by the people. Accordingly, insofar as the process relies on such externally supplied discipline, it fails to give expression to the agency of the people, one of the values that lie at the core of populist democracy. Second, not even experts can foresee all of the ways in which individuals’ views about a given set of issues will need to be disciplined by the limits of what is possible. In order to achieve adequate discipline, pre-selecting a few foreseen trade-offs and building them into the questions that people are asked will not suffice. For a more fully disciplined outcome, there is no better route than actually empowering people to decide issues and then holding them accountable for their decisions.<sup>27</sup> This is what the institutions of electoral democracy do.<sup>28</sup>

Even Deliberative Polls, therefore, lack the kind of inherent discipline, either individual or collective, that is necessary to converting mere wishes into a deliberative choice. Accordingly, informative as their results may be, these devices for sampling public opinion fall far short of expressing the will of the people—which, I am assuming, must be coherent. The same conclusion holds even more strongly of ordinary, random-sample opinion polls: they are not useless as indicating popular sentiments, but they do not begin to get at the will of the people. Formulating a will, in the requisite sense, requires being empowered to choose.

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<sup>27</sup> I do not mean to suggest that empowering accountable decision-makers yields perfect discipline.

<sup>28</sup> I lack the space, here, to describe the place of representative, electoral institutions within the compound ideal of democracy that I have set out. I have attempted to make this connection in *Democratic Autonomy*, chap. 14.

Now, Fishkin recognises the importance of political power, but only in a negative way. Recognising how the exercise of power can shape and distort the agenda of public decision, he presupposes, as a necessary background for the operation of Deliberative Polls, a full set of republican institutions for dividing and checking power, so as to prevent any narrow faction from hijacking the political outcomes. What the point about discipline shows, however, is that any adequate implementation of democracy must go beyond this republican way of dealing with power, and find ways of empowering the people. Only if the people are empowered can they form a will, let alone express it.

What is seductive about the Counterfactual Question is that it seems to suggest a conception or interpretation of the will of the people, one that Deliberative Polls are well suited to approximating. What I have argued is that, useful as they certainly are, Deliberative Polls—and, a fortiori, ordinary opinion polls—do not begin to approximate anything like the will of the people.

### **The General Happiness and Practical Intelligence**

Compared to the undisciplined expressions of wish that opinion polls pick up, ways of measuring happiness, such as the Gross National Happiness approach pioneered in Bhutan, represent an important improvement. Happiness, as assessed in ways sensitive to its multiple dimensions, is at least something that really matters. Obviously, a purely utilitarian approach to political rule, according to which a polity ought to do whatever maximises its citizens' aggregate happiness, completely bypasses democracy. I am not aware that anyone today defends this kind of unconstrained technocracy. More commonly, the idea of happiness—like the similar ideas about capabilities that underlie the human development index developed by Amartya Sen and Mahbub ul Haq—is appealed to as the proper basis for guiding the implementation of broad policy decisions taken by democratically elected legislatures. In this role, indices of national happiness, like indices of human capability, become bureaucratic tools for assessing alternative policies.

In this constrained role, that of shaping and informing administrative policymaking, appeals to happiness indices are, in my view, a big improvement over mainstream economic approaches, such as the

maximisation of consumers' surplus or of gross national product. In making this judgment, I take the proviso about this constrained role to be very important. The constraints of utilising either of these measures in this role crucially move us away from two of the idealisations that would otherwise make mainstream economists' measures more attractive: the idealisation of perfect information about options and the idealisation of the free market. In the economists' ideal world of perfect information, in which each individual has completely thought through all of his or her preferences, it would be much harder to claim that individual preference orderings—which is ultimately the informational basis of the mainstream economists' measures—fail to capture what really matters. Further, in an ideally free market, the mainstream economists' measures have the great advantage of being responsive to every individual's preferences—of achieving Pareto optimality—without ever having to make any controversial judgments about which citizens' preferences better respond to what really matters. From the standpoint of democratic theory, which must contend with the difficulties for legitimation that arise from diversity in individuals' conceptions of the good, this is a significant normative advantage. It is achieved, however, only because the ideally free market produces its Pareto efficient results automatically, "as if by an invisible hand," without any central judgments being made at all. But now, to return to the proviso: conceiving of either of these sorts of measure as being employed in any actual policy making process requires dropping the supposition that we are working in a situation of perfect information. And seeing either measure as playing a role in policy deliberations of any kind is to cast it as assisting a central policy process of making controversial judgments. Since the mainstream economists' measures thus lose their principal normative advantages when constrained to this role, it becomes correspondingly more attractive to turn to happiness indices, which offer a much richer and more reliable initial listing of the considerations that matter.

So in actual policy-making use, happiness indices are more likely, as I say, initially to capture values that really matter. Of course, at one level this is a trivial claim. Aristotle wrote that "verbally there is very general agreement; for both the general run of men and people of superior refinement say that [the ultimate end of human action] is

happiness, and identify living well and faring well with being happy; but with regard to what happiness is they differ....”<sup>29</sup> Some are tempted, still, to identify happiness with a single measurable quality, such as pleasure.<sup>30</sup> In my view, however, the human development index and Bhutan’s gross national happiness idea do better at representing the nature of happiness, considered as the ultimate end of practice (here, political practice), because they correctly represent its intrinsic multidimensionality. In common with Aristotle and his follower Martha Nussbaum—an ally of the human development approach of Sen and Haq—these approaches represent happiness or human well-being as consisting in multiple, incommensurable types of good.<sup>31</sup> In my critique of the democratic relevance of the gross national happiness approach, I will be assuming that happiness or the ultimate end cannot be reduced to a single, measurable quality. This is an assumption that I cannot defend here.<sup>32</sup> It seems, however, also to be an

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<sup>29</sup> Aristotle, *Nicomachean Ethics* (W. D. Ross translation revised by J. O. Urmson), 1095a16-20.

<sup>30</sup> See the contribution to this volume by John Bronsteen, to whom I am indebted for lively conversations about the issues in this paragraph.

<sup>31</sup> On the incommensurable elements of the highest good in Aristotle, see my article, “Degrees of Finality and the Highest Good in Aristotle,” *The Journal of the History of Philosophy* 30 (1992): 327-352. For Martha Nussbaum’s account of the incommensurable elements of the human good, see her *Women and Human Development: The Capabilities Approach* (Cambridge, England: Cambridge University Press, 2000).

<sup>32</sup> What it takes to defend this assumption depends in part on exactly what one means by “incommensurability.” Somewhat idiosyncratically, I insist on distinguishing incommensurability from incomparability and define the former as obtaining (in a weak form) “if and only if all of the considerations for and against choosing any option in any situation may be adequately arrayed prior to the choice (for purposes of deliberation) simply in terms of the greater or lesser satisfaction of some single norm (or instantiation of some good)” (Richardson, Henry S., “Commensurability,” in Becker, Lawrence C. and Charlotte B. Becker, (eds.), *Encyclopedia of Ethics*, 2<sup>nd</sup> (ed.), Vol. I, p. 260). I go some way towards defending the incommensurability of values, so understood, in Richardson, Henry S., *Practical Reasoning about Final Ends* (Cambridge, England: Cambridge University Press, 1994). See also Martha C. Nussbaum, *The Fragility of Goodness* (Cambridge, England: Cambridge University Press, 1986), chaps. 2-4.

assumption of the approach whose relevance to democratic policy making I will be questioning.

There are two fundamental reasons to be careful about relying too heavily on happiness indices as a basis for policy making. The first is that it remains undemocratic, albeit less radically undemocratic than an unconstrained utilitarian approach. The second is that it blocks the collective use of practical intelligence. These two problems are deeply connected with each other.

Behind both of these problems lies the basic fact that it is impossible for modern legislatures to settle all of the important value conflicts that must be faced in order to carry out public policy. This is obvious regarding areas such as health policy, employment policy, or environmental policy. To explain the difficulty, I offer an example from U.S. transportation policy. In 1970, a U.S. congressman named Mario Biaggi introduced a small amendment to the gigantic Transportation Act of that year. The Biaggi Amendment simply said that “transportation systems shall be made accessible to the disabled.” The Act was passed by the Congress, signed into law, and transmitted to the Department of Transportation for implementation. Naturally enough, back in 1970, the bureaucrats in the Department of Transportation had no firm ideas about how to make transportation systems accessible to the disabled. This had not been done before. Initially, their economists, looking for the most cost-effective approach, suggested giving subsidies or vouchers to the disabled, enabling them to pay for individual van service to get them from one point to another. Before long, however, conversations with other government officials involved in early discrimination lawsuits by the disabled and their advocates realised that there might be some value in integrating the disabled into the existing system of buses, subways, trains, and airplanes—in “mainstreaming” the disabled, as we say, rather than isolating them to special vans for the handicapped. This mainstreaming approach is the one that the administrative officials in the Department of Transportation ultimately chose, leading to the system of ramps, elevators, and so on that are familiar to every traveler today. Now, this is a striking illustration of administrative discretion, but it also reveals a very pervasive fact about the division of labor between democratically

elected legislatures and the administrative agencies that implement their policies, namely that it is impossible for the legislatures to get very far in the process of working out the important value conflicts that must be faced in implementing public policy.

This background fact underlies both of the problems with any fundamental reliance on a happiness or capability index in policy-making, even one that is constrained to work within legislative decisions. First, because it will inevitably be the case that very important value conflicts remain to be worked out at the stage of administrative policy-making, it will be important to have democratic input at that stage. I will return to that point, below. Second, because these conflicts typically concern unsettled questions about our priorities, it is important to leave room for the operation of a flexible, collective, practical intelligence to work out how to resolve these questions, rather than requiring the process to use an index or metric that purports to have settled, in advance, the important questions about what matters. Characterising practical intelligence in this way as flexibly remaking our aims and ends in light of obstacles we encounter was one of the hallmarks of the great American philosopher John Dewey. As he wrote, “the doctrine that intelligence develops within the sphere of action for the sake of possibilities not yet given is the opposite of a doctrine of mechanical efficiency.... [O]nly by ignoring its primary function does [intelligence] become a mere means for an end already given.”<sup>33</sup> Because I find this account of practical intelligence persuasive, I am tempted to think of failures of this kind of flexibility as exhibiting a paradigmatic form of stupidity.<sup>34</sup>

This point about the need for a kind of practical intelligence that flexibly refashions our aims in the face of the practical obstacles we face

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<sup>33</sup> Dewey, John, “The Need for a Recovery of Philosophy,” in *The Political Writings*, (eds.) Debra Morris & Ian Shapiro eds. (1993 [1917]), pp. 6-7.

<sup>34</sup> This stupidity is even more markedly exhibited by approaches to policy-making that view cost-benefit analysis as providing an ultimate normative standard, as I argue in “The Stupidity of the Cost-Benefit Standard,” *The Journal of Legal Studies* 29 (2000): 971-1003, reprinted in Adler, M. D. & E. A. Posner, (eds.), *Cost-Benefit Analysis: Legal, Economic, and Philosophical Perspectives* (Chicago: University of Chicago Press, 2001): 135-167.

is a positive, constructive counterpart to the point I made about the absence of discipline that characterises even deliberative polls. Disciplining ourselves by truly facing up to the obstacles confronting us does not merely cause us to eliminate some wishes as being unattainable. Rather, it also spurs us to be creative about how we can at least to some extent attain ends we take to be worth seeking, although perhaps in forms we need newly to formulate. In implementing the Transportation Act of 1970, U.S. transportation officials did not push for a pure or unmodified form of mainstreaming that would have required making every single bus and rail car accessible to the disabled. Rather, what they determined was that each transportation system must be made accessible to the disabled. That is, they settled on making some of the buses and some of the rail cars (in each city and state) accessible to the disabled. In this way, they flexibly modified the pure aims that were theoretically suggested in order to come up with a policy that was feasible. In so doing, they worked out a compromise regarding what really matters.

Precisely because happiness indices, like capability indices, purport to capture what truly matters, any proposal that they be the basis for policy-making gets in the way of the kind of practical intelligence exemplified by my transportation story. In working out how to address the conflict between mainstreaming the disabled and the overall cost to society, the U.S. transportation officials involved were addressing unsettled questions about what really matters. Whether a disabled person is able to have access to mainstream methods of transportation really does, I expect, matter in an intrinsic way that is independent of his or her ability to get from place to place; but how this matters, and how to assess its importance in relation to the potentially huge costs to the public treasury of complete mainstreaming, were questions impossible to settle objectively in advance. After the work of these transportation officials, it is more settled now in the U.S. than it was before that - though unfortunately not due to a particularly democratic process of refining ends.

In addition to needing the discipline that comes only with empowerment, therefore, the will of the people needs to operate with the flexible intelligence that implies not being bound, in advance, to a

determinate purported index of what truly matters, be that an index of happiness or of human capability. A democracy needs to have room to work out, in a contextually specific way that responds to practical obstacles, what really matters. In a democracy—which, as I have insisted, is a form of rule by the people—the people need to have a hand in flexibly working out what matters for the case at hand. The continuing, public articulation of what matters is not a task that democracies can afford to leave to experts. Further, as my transportation story illustrates, this need for a democratic working out of what really matters is not confinable to the legislative stage of public decision-making. The resulting need to think of the democratic will as being forged also in the administrative agencies, however, raises a real challenge for democracy as such.

### **The Danger of Bureaucratic Domination**

The principal republican device for curbing arbitrary power, namely the separation of powers, has been deployed in many places since ancient times, including the Roman republic. By allowing for a system of “checks and balances,” it was originally designed to prevent any one class from dominating. Modern implementations of this idea are often quite elaborate, and tend to include bicameral legislatures, periodic elections, and judicial review of legislation among their safeguards. Sometimes, as in the United States, it seems that these checks and balances have been taken too far, leading to paralysis. Nonetheless, in all democracies today, there remains a form of power that is inadequately subject to check, namely the policy-making power of administrative bureaucracies. As my story about the Transportation Act of 1970 illustrates, administrative agencies must inevitably make many important public decisions. In democratic countries, these agencies are typically under the nominal control of an elected chief executive. Yet these agencies are often so vast and their activities so multifarious that this control is very loose. The looseness of this control leaves open a practical danger of domination by the bureaucracies; and, independently of the practical problem, there is a theoretical problem about how to integrate administrative rulemaking into democracy, understood as a form of rule by the people.

As an historical matter, the reasons why democracies have tended to neglect the danger of bureaucratic domination are presumably very



complex. In Europe, presumably part of the reason is that the first social theorist truly to give prominence to bureaucracies, namely Max Weber, tended to praise them—arguing, for instance, that bureaucratic organisation lay behind the success of the great irrigation-based empires of the ancient Middle East—and also tended to suggest a scientific or technocratic model of well-functioning bureaucracy. On this model, the legislatures set the ends and the bureaucracies confine themselves to the technical task of selecting efficient means to those ends. As the example of the Biaggi Amendment makes vivid, this suggestion that all the serious work of setting public ends could be done in the legislatures is hopelessly naïve; but in putting forward this suggestion, Weber was fitting in with the main strand of Western republican thinking. In that tradition, republican institutions for dividing and contesting power were invoked in two main stages: first, against the great monarchs of Europe and, second, at the time of the founding of the American republic, against the danger of a tyranny of the majority. It is perhaps because republicans' worries were focused elsewhere and because early theorising about bureaucracy cast it in a positive light, then, that the danger of bureaucratic domination has been largely neglected.<sup>35</sup>

The danger of bureaucratic domination is particularly important for emerging democracies. Consider the following description of Alan García's Peru: "Peru is considered a democracy because it elects a president and a parliament. In the five years after an election, though, the executive branch has been known to make 134,000 rules and decrees with no accountability to the congress or the public. After elections, no ongoing relationship exists between those who make decisions and those who live under them."<sup>36</sup> If this is how things go, then these superficial forms of democracy will indeed be a mere sham. Modern democracies cannot do without administrative rulemaking. Legislatures cannot be expected to develop the detailed provisions needed to deal

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<sup>35</sup> There are exceptions, among which are Stewart, Richard B., "The Reformation of American Administrative Law," *Harvard Law Review* 88 (1975): 1669-813 and Lowi, Theodore J., *The End of Liberalism: Ideology, Policy, and the Crisis of Public Administration* (N.Y.: Norton, 1979).

<sup>36</sup> Hernando de Soto, "Some Lessons in Democracy—For the U.S.," *New York Times*, April 1, 1990, sec. 4, p. 2.

effectively with such topics as environmental protection and health care provision. Accordingly, ways must be found of reconciling administrative rulemaking to democracy.

Tendencies to bureaucratic domination are also found in certain Asian countries. This year's elections in Japan prominently featured this issue. Soon after the elections, the *New York Times* commented that "[c]ontrolling the bureaucracy was the signature campaign pledge of the Democrats, and one that found overwhelming support among voters fed up with the nation's insider-driven politics. But many former bureaucrats and political analysts are doubtful that the Democrats, as the inexperienced former opposition party, can make much headway against a force that has run this country for decades."<sup>37</sup> This comment highlights that there are two necessary steps, here: the first is to prevent the bureaucracies from obstructing democratically supported initiatives. The second step—a more ambitious one, yet one still required for full democratic legitimacy—is to arrange things so that the bureaucracies' decisions can rightly be viewed as contributions to forging the people's will. No nation that I am aware of does very well at this second task, but some do better than others.

An elementary requirement for making the first step is to be sure that administrative agencies are accountable to the legislature and to the public. The usual means for assuring this kind of accountability are extensions of the usual republican mechanisms to this new problem. Some of these subject administrative agencies to checking by other branches of government—for example, systems of regular legislative oversight of administrative action and avenues for judicial review of administrative rulemaking. Other such means of holding bureaucracies to account apply the constraints of the rule of law in a more general way, insisting, to begin with, that administrative decrees be made public.

As I argued at the outset, however, republican devices for protecting against domination are necessary, but not sufficient, for democracy. Administrative policy-making being so crucial to how modern states

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<sup>37</sup> Fackler, Martin, "Fresh Off Victory, Japanese Party Flexes Muscle," *New York Times*, September 3, 2009.

rule, mechanisms must be put in place that help see to it that this aspect of state rule, too, can count as a form of rule by the people. As I have argued above, we must think of popular sovereignty as being institutionally divided and distributed. Here, the challenge is to conceive of ways that this institutional embodiment of the popular will can extend into the administrative realm. In this effort, the criteria of success are eminently contestable. In general, however, the aim is to assure the public, not merely a chance to contest and appeal administrative decisions they do not like, but meaningful input and influence in administrative policy-making from the outset.

Which mechanisms will work well for this purpose will vary, depending on a nation's constitutional arrangements, traditions, and laws. In the United States, a first step in the direction of public influence on administrative policymaking was taken with the Administrative Procedures Act of 1946, which, among other things, required that all administrative rules applying to members of the public and having the force of law had to first be subjected to a fairly extensive process for collecting public comments. This was, however, only a first step; for it is never precisely clear what the agency must do in response to the comments collected, besides "take them into consideration." The U.S. took an important further step with the Negotiated Rulemaking Act of 1990. For issues involving easily-defined "stakeholders," such as logging companies on the one side and conservationists on the other, this Act required that concerned members of the public be invited to participate in the drafting of administrative rules. For administrative-level issues that more broadly concern the public at large, better models of citizen input are found in the participative budgeting exercises in Porto Alegre, Brazil, and in the village panchayots of Kerala.<sup>38</sup> I will not attempt to offer any particular prescriptions about how best to secure public input and influence in administrative rulemaking. In this section, my aim has simply been to emphasise that adequately achieving democratic rule, which is a form of rule by the people, requires making some such innovative effort to involve the people in administrative

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<sup>38</sup> Each of these innovations has received much attention by democratic theorists: see, e.g., Fung, Archon and Erik Olin Wright, (eds.), *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso, 2003).

policymaking. This point should be borne in mind as I turn to a more constructive examination of the role that a gross national happiness approach can play in facilitating democratic governance.

### **Gross National Happiness as an Aid to Forging the Will of the People**

From my critical discussion, three desiderata have emerged that apply to any broad proposal about how policies should be made in a democracy. First, any policy-making process should throughout be disciplined, in the sense that its deliberations respect the limits of the possible, rather than being led off on tangents by mere wishes. Second, any policy-making process should also encourage a practically intelligent approach to public problems, one wherein public deliberations are flexibly open to refashioning collective ends and aims in light of unexpected obstacles. Third, any policy-making process should be designed so as to reduce the danger of bureaucratic domination, both by remaining accountable to the people and their democratic representatives and by providing mechanisms whereby agency decisions can continue to contribute to forging—or hammering out—the will of the people. I would like briefly to consider the idea of using gross national happiness as a policy tool in light of these three desiderata. In doing so, I will combine the second and third.

First, then, how can the idea of gross national happiness be a guide to disciplined policy-making? The reason that this is a significant question is that complete happiness for all is obviously an impossible wish. The careful elaboration of the many different dimensions of happiness, which is such a marked feature of Bhutan's version of the idea, only makes this point more obvious. The more distinct dimensions of happiness that one recognises, the more plain it becomes that each person will score significantly below the maximum score on a number of dimensions. Although a devotee of such a multi-dimensional conception of happiness might wish things were otherwise, there seems to be no escaping the need for theoretically formulating a more disciplined bridge between happiness's multiple dimensions and policy selection. Although I am sure that others have examined these issues much more thoroughly than I have, I will offer some brief thoughts about possible responses to this theoretical task in order to illustrate what I mean by a disciplined use of the idea of gross national happiness.

Let's thus quickly examine some possibilities: (i) More realistic than the idea of providing maximum happiness on every dimension to everyone is that of seeing to it that no one experiences a decrease on any dimension of happiness—a sort of extended Pareto criterion. Yet this way of linking happiness to policy is also plainly impracticable. As I have already mentioned, many clearly reasonable and needed policies have losers as well as winners. (ii) Perhaps, in any case, the idea of gross national happiness encourages an aggregation across individuals. On such an approach, within each dimension of happiness, we could look at the national average scores. Yes; and then what should we demand of policies? A close relative of the extended Pareto criterion would insist that policies aim to avoid a decrease in the national average in any of the dimensions. While this is an attractive aim, it seems obvious that there will be some situations—say because of an epidemic, an earth-quake, or a shortage of teachers, or simply for reasons of strategic planning—in which some dimensions will need to be given sufficiently high priority for a stretch of time that it is reasonable to accept backwards movement in the national averages for some of the other dimensions. (iii) A more substantive basis for developing a disciplined way of working with the idea of gross national happiness would be to draw on views about distributive justice. One currently popular idea about distributive justice is that each person should be assured an adequate minimum—a “sufficiency”—of the goods that matter, or at least of opportunities to achieve or access them.<sup>39</sup> Whether it is realistic to aim to bring every citizen to an adequate minimum level in each dimension of happiness would depend, of course, on how that minimum level is set.<sup>40</sup> (iv) Relatedly, especially in developing countries that face serious challenges in

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<sup>39</sup> See, e.g., Frankfurt, Harry, “Equality as a Moral Ideal,” *Ethics* 98 (1987): 21-43; Anderson, Elizabeth S., “What Is the Point of Equality?” *Ethics* 109 (1999): 287-337; Crisp, Roger, “Equality, Priority, and Compassion,” *Ethics* 113 (2003): 745-63; and Nussbaum, Martha C., *The Frontiers of Justice* (Cambridge, Mass.: Harvard University Press, 2006).

<sup>40</sup> In *Frontiers of Justice*, Nussbaum suggests that the adequate minimums may be differently set by each nation and insists on maintaining the aspiration of securing an adequate minimum for each citizen on each important dimension—though she is talking about dimensions of capability, not of achievement or functioning.

securing an adequate standard of living for all their citizens, one might abstract away somewhat from this insistence on an adequate level in each dimension and instead set out to minimise poverty, multi-dimensionally understood. Such an approach has been developed by Sabina Alkire and James Foster.<sup>41</sup> Their approach starts from the idea that there is a point of sufficiency in each dimension but then, instead of insisting on securing a sufficiency in every dimension for everyone, develops a rigorous way of defining poverty by counting in how many dimensions a person falls below the adequate minimum.

Reducing poverty is obviously not only a realistic but also an urgent goal. If we narrow down to this goal, however, we may be achieving discipline at the cost of excessively limiting our aspirations. The ideal of democracy itself illustrates that there are other concerns of justice aside from the eradication of poverty: it is important to both reduce poverty and avoid tyranny. In addition, even setting aside such constitutional concerns and sticking within the category of distributive justice as it arises within a legitimate constitutional regime, there is a lively debate between defenders of a “sufficientarian” approach and “prioritarians,” who would give priority to the poor rather than insisting on their reaching sufficient minima.<sup>42</sup> More generally, we might seriously question whether justice of this distributive kind—whether sufficientarian or prioritarian—adequately captures the goals of policy. Other concerns that might matter at a level that might compete with distributive justice for our practical attention might include peace with other nations and the maintenance of national traditions.

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<sup>41</sup> Alkire, Sabina and Foster, James, “Counting and Multidimensional Poverty,” *OPHI Working Paper 7* (2007), [www.ophi.org.uk](http://www.ophi.org.uk). See also Alkire, Sabina, Santos, Maria Emma, and Ura, Karma, “Gross National Happiness and Poverty in Bhutan: Preliminary Explorations using Pilot Data.” [Cite?]

<sup>42</sup> For citations to sufficientarians, see n. 40, above. On prioritarianism, see, e.g., Parfit, Derek, “Equality or Priority?” in *The Ideal of Equality*, (ed.) Clayton, Matthew and Williams, Andrew (London: MacMillan, 2000): 81-125; and Arneson, Richard J., “Luck Egalitarianism and Prioritarianism,” *Ethics* 110 (2000): 339-49.

About how a gross national happiness approach could contribute to a disciplined approach to policy-making, then, I simply conclude that there is an important need for theoretical work to articulate how policy should respond to variations in the multiple dimensions of happiness, as it is conceived on such an approach.

The remaining two desiderata, flexible intelligence and the avoidance of bureaucratic domination, come together to urge some caution in utilising happiness indices to guide policy-making. I have already argued that an elaborated account of the dimensions of happiness is in danger of being fetishised in a way that blocks flexible thinking. If it is policy-making bureaucrats who fetishise these indices, then that will tend to make them resistant to popular input, as they will think that they already know what the basis of their decisions should be and need only to ascertain the causal facts. Institutionalising inflexible thinking would thus exacerbate the danger of bureaucratic domination.

How can the idea of gross national happiness be put to work in policy-making while avoiding the twin dangers of stupidity and bureaucratic domination? One good way to do so, I want to suggest, would combine two features: (1) it would use such accounts of the many dimensions of happiness as a device for identifying value conflicts and (2) it would approach the identified value conflicts as occasions for articulating still more dimensions of happiness. Let me illustrate these points.

We have already seen this twin dynamic at work in my example of US policy about transportation for the disabled. In the case of the Biaggi Amendment, the initial dimension of value, set by the Amendment's language, was making transportation systems accessible to the disabled. This is already quite a specific dimension of assessment. As the possible conflict with not discriminating against the disabled revealed, however, it was not yet specific enough. The resolution of the issue involved an even more specific characterisation of what matters, namely: disabled people being able to have access to mainstream transportation systems in ways that do not stigmatise them as second-class citizens. The compromise language, here, about "mainstream transportation systems" and "stigma" indicates that this more specific and complex value is not merely a compound of access to

transportation and non-discrimination. It leaves aside some possible implications of such a compound (such as insisting on non-discriminatory access to each and every seat on each and every public-transport vehicle) while at the same time indicating what sorts of efforts should get priority (making each type of public transport accessible to the disabled).

Before I comment on the advantages of identifying value conflicts and further articulating dimensions of value in this way, let me give one more example, one more relevant to a country such as Bhutan. I have been addressing the idea of happiness indices in general. Impressively, Bhutan's development of the idea of gross national happiness emphasises, not the formulation of an index as such, but instead the distinguishing of the multiple dimensions of happiness. Bhutan's current set of Project Selection Tools, still under development, list hundreds of dimensions that matter to human happiness.<sup>43</sup> As a thoughtful groundwork for policy analysis, this is tremendously helpful. It provides the policy-maker with an initial approach that is sensitive and flexible enough to respond to all sorts of conflicts among various aspects of what matters. Precisely because this set of tools is so well articulated, however, one must be cautious not to cast them in the role of selecting policy. As finely-grained as this set of dimensions already is, there will always arise cases in which an intelligent approach to resolving a conflict between two or more of the dimensions of happiness calls for the policy-maker to make things more fine-grained still.

Here is an example of how this can happen. The current draft of the Project Selection Tools starts with eighteen policy areas. Within one of these, health, twenty-two indicators or sub-dimensions are

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<sup>43</sup> These dimensions of happiness, which have been developed by Dasho Karma Ura and Dorji Penjore, are listed under eighteen main headings at <http://www.grossnationalhappiness.com/screeningTools/projectTools.asp> (accessed 20 November 2009).



distinguished.<sup>44</sup> Included within these twenty-two happiness indicators pertaining to health are the following four:

- a) cost of health care
- b) access to health care
- c) patients' waiting time
- d) patients' referral time

Indicators (a) and (b) pertain to access to health care, broadly understood, while (c) and (d) concern important aspects of the quality of health care. In an ideal world, one might imagine, one could offer public health care at low or zero cost and yet not force patients to wait significantly for their referrals or for their care. As people start to live longer, however, and hence start to have more complex medical needs, even the well-resourced and sophisticated medical systems of developed countries have difficulty keeping the waiting times down without imposing some limits on access, including fees such as co-insurance or office co-pays. Bhutan, I gather, is just beginning to have to face up to this kind of conflict between these different sub-dimensions related to health.

A tempting and natural response to this problem is to see it as calling for establishing a trade-off ratio, a set of weights to be applied to each of these sub-dimensions, taking the specification of these sub-dimensions as being fixed. This is not an unreasonable way to proceed but, precisely because it does take these goals or aims as fixed for purposes of deliberation, it runs the risk of an inflexible stupidity. In addition, whenever one sets out to try to establish weights of this sort, one runs into a problem of arbitrariness. This problem of arbitrariness is at least twofold: first, there is the fact that a very wide range of trade-off ratios will seem to be defensible: how is one to settle upon one of them without picking arbitrarily? Second, if we assume that, like the principal dimensions of happiness, these sub-dimensions of health are incommensurable,<sup>45</sup> then any superimposition of trade-off ratios will

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<sup>44</sup> Dasho Karma Ura and Dorji Penjore, Project Selection Tools, <http://www.grossnationalhappiness.com/screeningTools/projectTools/09%20Health.pdf> (accessed 20 November, 2009).

<sup>45</sup> In the sense defined in n. 33.

necessarily distort the relations among the reasons that these sub-dimensions represent. One way this distortion is likely to show up is this: if we work out trade-off ratios with the particular sort of policy issue I have just mentioned principally in mind, and then attempt to utilize those same ratios in the context of a different policy problem, we are apt to find that the ratios do not generalise well in this way from one context to another. Trade-off ratios, then, are likely to presume and project a false generality.

But what can we do if we do not seek trade-off ratios? We can drop the assumption that the relevant (sub-) goals are fixed in their specification and can, instead, do what the US Transportation officials ended up doing with implementing the Biaggi Amendment, and seek to specify the relevant dimensions of happiness more finely still. This process of refining our goals, of course—as should be plain by now—should be one that is not only publicly open but also responsive to public input. Otherwise, this refinement of our public aims will again raise the chances of bureaucratic domination. In light of robust public input, however, we can well imagine a contextualised specification of the aims that matter, one that response to principled distinctions. I cannot take the space to walk through an imaginary course of specifying public ends in any detail. We can easily imagine, however, that a reasonable course of refinement might, for example, respond to a principle articulated through public discussion such as the following: frivolous visits to clinics should be discouraged in order to enable high-quality care for those who really need it. If people came to accept such a principle, then they might use it to guide them in further sub-dividing the relevant health dimensions, as follows:

- (a<sub>1</sub>) cost of urgently needed health care
- (a<sub>2</sub>) cost of health care that is not urgently needed
- (b<sub>1</sub>) access to urgently needed health care
- (b<sub>2</sub>) access to health care that is not urgently needed
- (c<sub>1</sub>) patients' time waiting for urgently needed procedures
- (c<sub>2</sub>) patients' time waiting for procedures not urgently needed
- (d<sub>1</sub>) patients' referral time for urgently needed procedures
- (d<sub>2</sub>) patients' referral time for procedures not urgently needed

Of course the distinction between what is urgently needed and what is not is too binary and crude: I have left things simple for illustrative purposes. Still, a listing of the relevant sub-dimensions that incorporates this distinction is, in light of the policy problem I mentioned, superior to one that leaves it out. One would not want to multiply sub-dimensions of assessment *ad libitum*, as things would thus grow needlessly complex. My suggestion, rather, is that one see conflicts that actually arise between dimensions, such the one that arises in facing policy problems about access versus quality, as providing occasions for further refining one's working sense of the dimensions of what really matters, from a public point of view.

### **Conclusion**

Democracy cannot adequately be characterised by contrasting it with aristocracy and monarchy: it is not merely rule "of the people." To take the further step of instituting rule on behalf of, or "for the people" – say, by listening to opinion polls or making the happiness of the people the goal of lawmaking – still does not adequately institute democracy. As I have argued, there are two kinds of reasons for this. The first is that any democracy must also be a form of popular sovereignty, or rule "by the people." The second is that the will of the people – like any intelligent human will – can be developed and expressed only in conditions that empower it flexibly to remake ends and aims in the course of deciding what to do. These modes of ruling on behalf of the people omit that empowerment and hence create no scope for the people's practical intelligence. Allowing it sway in lawmaking is not easy. The challenges are multiplied by the need to extend the scope of the people's will to administrative policymaking. Through creative institutional restructuring of the law-making process, however, these challenges can be met. In intelligent processes of democratic law-making, refined indices of gross national happiness can play a very valuable role by helping identifying conflicts among dimensions of what matters and inviting public intelligence to help work out what to do in light of those conflicts. When used in this way as a catalyst for encouraging reasoned discussion among the citizenry, a gross national happiness approach can make a genuine contribution to democracy, understood as a form of rule by the people.