

# Reconsidering Nondemocratic Political Regimes

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## I. INTRODUCTION

From 1921 to 1928, the Bolsheviks consolidated a one party dictatorship in Russia and, in the arena of economic policy, presided with relaxed control over an underdeveloped, mostly agrarian society that suddenly during the civil war years had become overwhelmingly a land of smallholding

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farmers.<sup>1</sup> After 1928, there was brutal forced collectivization in the countryside.<sup>2</sup> According to Stephen Cohen's 1973 biography of the Bolshevik leader Nikolai Bukharin, Bukharin elaborated and pressed for a moderate Communism that would reject coercive squeezing of peasants to fund rapid industrialization in the cities and would instead rely on private ownership and market exchange in rural areas and slow industrial growth, accompanied by wide cultural freedom—but no political freedoms.<sup>3</sup> Compared to the nightmare that actually unfolded in the Union of Soviet Socialist Republics, Bukharin's vision looks good. I am not a Russian historian. For all I know, the actual Bukharin might have been a monster.<sup>4</sup> Bukharin's policy proposals for Russia in the 1920s, if implemented, might have proved to be utter disasters. But the tantalizing sketch of an alternative future for Russian communism that Cohen's Bukharin offers is a vivid reminder of the obvious truth that dictatorships—along with other types of nondemocratic regimes—vary in qualities to which political theorists should be attentive.

This is especially the case if you are an instrumentalist regarding the justification of democracy. The instrumentalist holds that the political governance system for a society that ought to be established and sustained in given circumstances is the one the operation of which would bring about best consequences as assessed by impartial moral principles.<sup>5</sup> The instrumentalist democrat holds that in modern times in a wide array of settings the instrumentalist criterion selects democracy as likely to be productive of best consequences.

"Democracy, yes or no?" is not the only question the instrumentalist should be considering. An instrumentalist criterion will also, in principle, select among the feasible alternative types of democratic systems that might be put in place in given circumstances. Moreover, the question whether

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1. STEPHEN F. COHEN, *BUKHARIN AND THE BOLSHEVIK REVOLUTION: A POLITICAL BIOGRAPHY 1888–1938*, at 123 (1973).

2. *Id.* at 337.

3. *See id.* at 161, 165–66.

4. For another view, see RICHARD PIPES, *A CONCISE HISTORY OF THE RUSSIAN REVOLUTION* 343–406 (1995).

5. Instrumentalism, under the label "best results theory," is characterized, and criticized, in CHARLES R. BEITZ, *POLITICAL EQUALITY: AN ESSAY IN DEMOCRATIC THEORY* 31–48 (1989). For a defense of a version of the doctrine, see generally RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* (2000). For further defense, see Richard J. Arneson, *Democracy Is Not Intrinsically Just*, in JUSTICE AND DEMOCRACY 40, 40–42 (Keith Dowding, Robert E. Goodin & Carole Pateman eds., 2004); Richard J. Arneson, *Democratic Rights at National and Workplace Levels*, in THE IDEA OF DEMOCRACY 118 (David Copp, Jean Hampton & John E. Roemer eds., 1993); Richard Arneson, *Elitism*, in 2 OXFORD STUDIES IN POLITICAL PHILOSOPHY 156, 167–68 (David Sobel, Peter Vallentyne & Steven Wall eds., 2016) [hereinafter Arneson, *Elitism*]; Richard J. Arneson, *The Supposed Right to a Democratic Say*, in CONTEMPORARY DEBATES IN POLITICAL PHILOSOPHY 197, 197 (Thomas Christiano & John Christman eds., 2009).

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to seek to create or sustain democracy is not a binary issue. The question also arises, to what degree should a political society be democratic—or better, since a political system admits of being more or less democratic along various dimensions, the question is, along the various dimensions to which a governance system might be more or less democratic, to what degree should the system be democratic?

Furthermore, to assess whether, say, Canada or Pakistan or Venezuela in present circumstances ought to be democratically governed and, if so, to what degree, we need to assess feasible nondemocratic alternatives. After all, the choice we are making is a comparative one. Winston Churchill famously quipped that democracy is the worst political system except for all the rest.<sup>6</sup> Along the same line, to defend some undemocratic regime for Canada today we need not argue that a nondemocratic alternative system would likely produce good results. All we would need to show is that the best undemocratic regime that Canada could adopt today, even if it would be likely to yield miserable outcomes in terms of, for example, human rights fulfillment and human well-being spread across individuals, would yield outcomes a bit better than any other system we might put in place instead.

Asking what the best feasible political governance system for a country at a time is admits of different interpretations, depending on the gloss we are placing on “feasible.” We might be thinking of the best feasible system as the best system that could be installed, in present circumstances, if a set of people sufficient to bring about the shift could be convinced to team up to effect it. A more restricted feasibility question would be posed if we asked instead, taking for granted the actual beliefs and attitudes and their entrenchment in the present members of society now, what is the best move from the status quo that, if proposed to them, would elicit sufficient allegiance from some of them, to effect the shift? The first way of posing the question has us set aside actual beliefs and attitudes of people now that bear on the question, what are the available options for regime change.

A more practical question to pose would be incremental. Given the present political system in a country of interest, would it be better in instrumental terms to push it in a more or a less democratic and to what extent? For simplicity, I stick in this Article to posing the issue at the more abstract level.

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6. Eur. Parl. Deb. (444) col. 207 (Nov. 11, 1947) (remarks of Mr. Churchill).

## II. GROUP PEOPLE IN POLITICAL SOCIETIES SO THAT DEMOCRACY WORKS WELL

If there should be democracy, people should be grouped together in political societies in ways that facilitate democracies functioning well.

Christian List and Mathias Koenig-Archibugi have, in effect, observed that the democratic instrumentalists poses their question too narrowly if they ask: given this political society at this time, should we stick with the status quo degree of democracy it embodies, or instead seek more, or less?<sup>7</sup> A broader question would be: if we decided that democratic governance is always better than alternative modes of governance in instrumental accounting, then how might people band together in political societies in such a way that the societies are able to function democratically and able to bring about best results? A still broader question would be, how might people band together in political societies in such a way that, if each is arranged democratically or nondemocratically, in whatever way that would produce best results, overall better results would be brought about than would be brought about under any alternative configuration of national borders?

Of course, there might be other standards that should play a role in determining what boundaries dividing separate political societies would be ideal. Maybe, in some circumstances, there is a right to secession, a right belonging to a compact subgroup of an existing political society to split off, taking some territory and forming a new independent state. Maybe, in some circumstances, there is a right to accession, a right belonging to the members of one state to join up with another and form one unified political society. Set these issues, this hornet's nest, aside.

To illustrate, perhaps some states as presently constituted are too fragmented and divided to be able to function well as democracies. If democracy facilitates good governance, then maybe some of these states need to be broken apart and reconstituted as new states. Maybe in the areas of the Middle East, where Jewish and Palestinian people are heavily concentrated, the prospects for a functioning democracy in which Israeli Jews and Israeli and Palestinian Arabs mix it up on equal terms are poor, and the prospects for well-functioning democracies would be increased if political boundaries were to establish a mostly-Jewish state and a mostly-Arab state. Maybe in the Trump era of the United States, prospects for a well-functioning U.S. democracy are poor, and these prospects would be

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7. List and Koenig-Archibugi are discussing other issues, not this one, but what they say has the plain implication I am rehearsing. See Christian List & Mathias Koenig-Archibugi, *Can There Be a Global Demos? An Agency-Based Approach*, 38 PHIL. & PUB. AFF. 76, 78–79 (2010).

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increased if the current United States was divided into two separate and independent political societies, Redland and Blueland.

III. RELATIONAL EGALITARIAN STANDARDS CAN REQUIRE  
NONDEMOCRATIC POLITICAL ARRANGEMENTS

In some circumstances, relational egalitarian standards for assessing the consequences of instituting one or another form of political arrangements will require nondemocratic political arrangements.

In passing, I note that the instrumental approach to democracy leaves it entirely open what are the correct, impartial standards for assessing the results of the operation of one or another form of political governance that might be installed. This implies that the best results approach, as such, is not committed to the assessment of outcomes in welfarist terms, counting a political regime as morally suitable to the extent that it would bring about better lives for people or, alternatively, lives higher in well-being, with aggregate well-being spread fairly across the members of society. Nor is the best results approach committed to the broader standard that political regimes should be assessed according to their distributive outcomes—the distribution of resources.<sup>8</sup>

To highlight the point, consider that a best results approach could adopt some version of relational egalitarianism as the appropriate outcome assessment standard without thereby committing itself to a preference for democratic over nondemocratic regimes. It all depends.

It depends on what sort of relational egalitarianism is the most plausible version, for starters. The relational egalitarian holds that it is *prima facie* very morally important that people relate as equals or be related as equals. Different versions of what relating as equals and being related as equals amount to have been proposed.<sup>9</sup> Elizabeth Anderson holds that relational

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8. The distribution of resources might be measured by the Rawlsian primary social goods, or resources as interpreted by Ronald Dworkin, or capabilities as construed by Amartya Sen or Martha Nussbaum. See generally RONALD DWORKIN, JUSTICE FOR HEDGEHOGS 2–3 (2011); DWORKIN, *supra* note 5, at 237; MARTHA C. NUSSBAUM, CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH 18–19 (2011); MARTHA C. NUSSBAUM, SEX AND SOCIAL JUSTICE (1999); MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000); AMARTYA SEN, INEQUALITY REEXAMINED 39–55 (1992).

9. A full discussion would need to engage with the views of Samuel Scheffler, whose writings on this topic have been seminal. See generally Samuel Scheffler, *Choice, Circumstance, and the Value of Equality*, 4 POL. PHIL. & ECON. 5 (2005); Samuel Scheffler, *The Practice of Equality*, in SOCIAL EQUALITY: ON WHAT IT MEANS TO BE EQUALS 21

egalitarian justice requires that all members of society be continuously enabled to function as full, participating members of democratic society.<sup>10</sup> This version builds a commitment to democratic political organization into the notion of relating as equals. Other versions leave this question open, or at least leave the door ajar somewhat.

#### A. Kolodny

Niko Kolodny understands the ideal of social equality—relating as equals—in terms of three relations of inequality: (1) some have greater formal or informal power over others and are not firmly disposed to refrain from using that power on the ground that doing so would wrong those with less power; (2) some have greater authority than others, meaning that they can issue orders to which the others would mostly comply and are not firmly disposed to refrain from issuing such orders on the ground that doing so would wrong those with less authority; and (3) some have attributes that “generally attract greater *consideration* than the corresponding attributes of others.”<sup>11</sup> “Consideration” here functions as a technical term. It gathers together kinds of responses that we should regard either as inappropriate for anyone to receive or as appropriate for everyone to receive, just by virtue of being a person.

A society satisfies the social equality ideal just in case either the three relations of social equality are absent, or, if they do exist, there is equal opportunity among all members of society continuously to exit any such relations that happen to obtain, with a further proviso that the badness, from the social equality standpoint, of unavoidable relations of equality that obtain, is attenuated or eliminated to the degree that their terms are set by political decision-making in which all members of society have formal and informal positive equal influence.

Kolodny affirms that social equality is valuable in itself, not merely as a means to the achievement of other values.<sup>12</sup> He suggests that the justification of democracy is that democratic governance is a very important constituent

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(Carina Fourie, Fabian Schuppert & Ivo Wallimann-Helmer eds., 2015); Samuel Scheffler, *What Is Egalitarianism?*, 31 PHIL. & PUB. AFF. 5, 13 (2003). For discussion, see generally KASPER LIPPERT-RASMUSSEN, RELATIONAL EGALITARIANISM: LIVING AS EQUALS chs. 2–3 (2018); AVISHAI MARGALIT, THE DECENT SOCIETY (Naomi Goldblum trans., 1996).

10. Elizabeth S. Anderson, *What Is the Point of Equality?*, 109 ETHICS 287, 289 (1999); see ELIZABETH ANDERSON, PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT) 3, 37 (2017); Elizabeth Anderson, *Democracy: Instrumental vs. Non-Instrumental Value*, in CONTEMPORARY DEBATES IN POLITICAL PHILOSOPHY 213, 214–25 (Thomas Christiano & John Christman eds., 2009).

11. Niko Kolodny, *Rule Over None II: Social Equality and the Justification of Democracy*, 42 PHIL. & PUB. AFF. 287, 295–96 (2014).

12. See *id.* at 323.

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of a society in which people are related as social equals rather than as inferior and superiors.<sup>13</sup> Democracy both partly constitutes social equality and is an important means to sustaining other constituents of social equality.

My modest suggestion is that, on this account, it might turn out to be the case that in some, perhaps even pervasive circumstances, establishing and sustaining some nondemocratic form of political governance is required in order to bring about a society that comes as close as is feasible to being a society of social equality. Call this nondemocratic social equality. The regime of nondemocratic social equality will not perfectly achieve social equality, but in some circumstances, any attempt to instantiate democratic social equality would do worse on this score.

To illustrate the possibility, imagine a social egalitarian leader. The leader controls the political process, and no one comes close to being the leader's rival. So, there is enormous deviation from relations of social equality. The leader has lopsided power and authority, and these relations of inequality are unavoidable and not attenuated by regulation by a political process in which all have equal influence. Nonetheless, the leader rules in such a way as to sustain wide relations of equality across all members of society but for the leader.

A less extreme version of the same would be a John Stuart Mill style plural voting scheme that distributes extra votes and so extra political power to those who pass some test of political competence.<sup>14</sup>

The nondemocratic political regime dedicated to maximizing social equality cannot fully achieve its goal without ceasing to be nondemocratic. But full achievement might be impossible to reach no matter what political arrangements are in place. The various possible regimes would likely score higher along some but not all dimensions, so a weighing is needed to establish which regime, all things considered, scores higher on the Kolodny social equality standard. We could certainly imagine nondemocratic regimes in which the kowtowing and bowing and scraping toward the select small political elite by the rest of us would be so extreme as to outweigh social equality relations established across nonelite persons. But just as one can imagine a workplace with a democratic culture, even if the owner is in charge,

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13. See *id.*

14. For a careful critical discussion of the idea, see David Estlund, *Why Not Epistocracy?*, in *DESIRE, IDENTITY, AND EXISTENCE: ESSAYS IN HONOR OF T.M. PENNER* 53, 53–54 (Naomi Reshotko ed., 2003).

one can imagine a political society in which relations between elite and nonelite are broadly egalitarian rather than resembling feudal hierarchy. Hence, the possibility to which I draw attention: Nondemocratic social equality.

One could minimize the significance of this possibility by noting the feature of Kolodny's view that says that the badness, by the social egalitarian standard, of unavoidable relations of inequality among people in society is diminished or possibly even eliminated to the degree these inequalities are regulated by democratic political decision-making over which all have equal influence.<sup>15</sup> If one gives this particular element in Kolodny's view enormous weight, it becomes very difficult to see how a nondemocratic regime could, all things considered, be more social egalitarian than a democratic one.<sup>16</sup>

However, giving this particular element enormous weight looks implausible and unmotivated within Kolodny's framework. Picture Northern Ireland in the mid-twentieth century, with democratic governance and a very stable Protestant majority. Suppose this very stable Protestant majority passes legislation that subordinates Catholics to Protestants in many ways. Yet political democracy is intact; no Catholic is denied the vote, and political association and free speech deliberation among Catholics are not suppressed. The society we are imagining is rigidly hierarchical, and it is rigidly hierarchical via democratic mechanisms. Any sane weighting of the elements in the Kolodny social equality ideal must yield the judgment that this society—which might be pretty close to actual Northern Ireland conditions during stretches of the twentieth century—must rank very low by social equality norms. Hierarchy regulated with gusto by a democratic state can still be vicious hierarchy. For another example, suppose a genuinely democratic

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15. See Kolodny, *supra* note 11, at 309–10.

16. The text here does not adequately register an important aspect of Kolodny's view of social equality and democracy. The social equality ideal as he understands it does not require that citizens have positive influence on political decision-making, so long as they have equal influence. See *id.* at 309. If they equally had zero influence and political outcomes were somehow determined by some type of random process not manipulated or controlled by any citizens, that situation would not offend against the social equality ideal. Only if some members of society have positive influence on political decisions does the ideal of social equality require that all have equal influence, both formal and informal. Kolodny finds plausible the thought that social equality rules out forms of political governance that give some individuals unequal political power and best results considerations select democracy as the superior option from the set of possible forms of governance that are compatible with social equality. See *id.* at 309–10. But there are other possibilities. To resolve the poor incentive properties of democratic systems with large electorates, one might favor randomly selecting a small group of citizens who would be given resources and time to become well informed about issues, and after due deliberation, select policy by majority rule. See Alexander A. Guerrero, *Against Elections: The Lottocratic Alternative*, 42 PHIL. & PUB. AFF. 135, 155–56 (2014).



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society regulates unavoidable relations of inequality between professors and students, medical doctors and patients, bankers and customers, and public officials and regular citizens in such a way that they resemble feudal relations more than relations we have observed in modern times. This democratic feudalism should also be assigned a low social equality score.

*B. Pettit*

Philip Pettit proclaims that if we secure republican freedom for all, in practical terms, this will be a sufficient condition for securing social justice.<sup>17</sup> That is to say, republican freedom is in itself a great justice value, and it will, as a matter of likely contingent fact, carry along with it any further justice values there are. Take care of republican freedom, and the other values we should care about will take care of themselves.

You have republican freedom, freedom as nondomination, to choose among certain options just in case: (1) you have adequate resources to enact any of the options and will not be subject to deliberate interference if you choose it; (2) the first condition holds no matter which option you prefer to choose; and (3) the first condition holds regardless of the preferences of any other persons regarding how you—or people of your kind—should choose. You qualify as a free person in your society just in case you have freedom as nondomination with respect to the basic liberties. The basic liberties in a society at a time are those that all can enjoy together. If a liberty is basic, anyone can exercise it, no matter how many others are exercising it, and anyone can gain value from exercising it, no matter how many others are exercising and gaining value from it. A society that protects freedom as nondomination for all with respect to the basic liberties protects all the liberties that fit this description. Notably, according to Pettit, freedom as nondomination, which he takes to be freedom at its best, is lacking if you have the secure opportunity freedom to, say, cross the bridge back and forth as you choose, but the following description also applies: There is a troll living under the bridge who could interfere with your bridge crossings but

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17. See PHILIP PETTIT, JUST FREEDOM: A MORAL COMPASS FOR A COMPLEX WORLD 80–81 (2014) [hereinafter PETTIT, JUST FREEDOM]; PHILIP PETTIT, ON THE PEOPLE'S TERMS: A REPUBLICAN THEORY AND MODEL OF DEMOCRACY 3 (2012).

is rock solidly disposed not to interfere, from conviction or stable desires, and all this is common knowledge.<sup>18</sup>

Oddly, Pettit also affirms the eyeball test for whether or not one is a free citizen among others. This test for people's being free from domination with respect to the basic liberties is that "absent excessive timidity or the like, they are enabled by the most demanding local standards to look one another in the eye without reason for fear or deference."<sup>19</sup> In the bridge example, the troll dominates you, and you lack freedom as nondomination with respect to this choice. But by the eyeball test, you are free, indeed a free citizen among others. If you bowed or scraped or kowtowed to the troll, the troll would think you were being weirdly unreasonable and might well feel insulted, as unjustly accused. I admit, the freedom in question here is not a basic liberty, but it would be child's play to amend the example so the point sticks. Let there be trolls everywhere hanging out on the edges of streets and highways, and the basic liberty in question, the freedom of each citizen to travel freely on public roadways, fast or slowly depending on conditions, with all others, limited only by traffic safety rules and congestion.

According to Pettit's account, social interaction is rife with potential for domination.<sup>20</sup> The standard for freedom he upholds is demanding, so satisfying it will be a tricky and difficult task.<sup>21</sup> But the task can be done. Pettit seeks an achievable social justice norm, not a recipe for utopian pie in the sky.<sup>22</sup> He holds that a well-functioning state can secure the basic liberties for all, eliminating or reducing almost to nothing what he calls horizontal domination—domination of one private individual by others.<sup>23</sup> The state brings it about that all have adequate resources to take care of themselves. In addition, if I am physically stronger than you and able to beat you up, and potentially able to wield that strength to threaten and bully you, the state, by appropriate criminal law enactment and enforcement, can coerce me into not beating you up and not implicitly or explicitly threatening you with a bashing.<sup>24</sup> This leaves the worry that the state, or those who wield

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18. See Matthew H. Kramer, *Liberty and Domination*, in *REPUBLICANISM AND POLITICAL THEORY* 31, 47–48 (Cécile Laborde & John Maynor eds., 2008).

19. PETTIT, *JUST FREEDOM*, *supra* note 17, at 99.

20. See *id.* at 112.

21. See *id.* at 187.

22. See *id.*

23. See *id.* at xviii–xix, 113.

24. See ROBERT S. TAYLOR, *EXIT LEFT: MARKETS AND MOBILITY IN REPUBLICAN THOUGHT* 1–4 (2017). Taylor highlights what he takes to be the effectiveness of providing people with genuine exit options from what might prove to be relationships between persons that involve domination. *Id.* at 34. Rather than trying to regulate romantic and marriage relations, or job and employment relations, to eliminate domination within them, we make sure people have real freedom to exit romances and jobs they find onerous in domination terms.

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state power as public officials or control the state, including the majority of voters in a democracy, will be unavoidably in a position of vertical domination.<sup>25</sup> Some citizens will dominate others via the state. Pettit's response is that, in the right sort of contestatory and deliberative democracy, this threat of vertical domination will be eliminated.<sup>26</sup> There remains only the threat that the people of one political society might be dominated by external powers, by foreign states or groups of external nonstate agents. This threat is extinguished by a republican international order that deters states from interfering in the sovereign liberty of other states.

But we can imagine a scenario in which the political regime, among those available for installation, that would best eliminate horizontal domination by some private members of society over others, unavoidably sets in place some significant extent of vertical domination. Let us add the claim that the dominating state power is troll like. Under this state regime, no individuals or groups who exercise dominating power over some members of society with respect to the basic liberties are in the slightest disposed to abuse this power they have over others. No one interferes with basic liberties. Nor does anyone use state power to threaten such interference in order to gain advantages for the threatener. In contrast, if this sort of regime were not in place, the horizontal domination among private individuals in society would give rise to actual abuse, wrongful interference, bullying, and worse. Pettit insists that freedom at its best is freedom as nondomination, but he does not hold that there is no moral difference between relations of bare domination—such as between the troll and bridge crossers—and relations that add actual interference and threat of interference in significant matters to bare domination.<sup>27</sup> In this situation, it is a more urgent matter to do away with the latter horrible domination than to do away with the more benign sort. And we are stipulating that in the situation under review, the

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25. The “majority” of voters might seem too shifting a group to constitute a dominator. See AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* 28–30 (1977). In a democracy, various coalitions of voters will coalesce into one, and then another, winning majority over time. But at any given time, a majority coalition might have the power to interfere broadly in some people's affairs, restricting their basic liberties, at that time. And anyway, some majority coalitions may be stable over time in societies with deep cleavages. See *id.* at 16. See generally AREND LIJPHART, *THINKING ABOUT DEMOCRACY: POWER SHARING AND MAJORITY RULE IN THEORY AND PRACTICE* 109–38 (2008).

26. For discussion of this claim, see generally Frank Lovett & Philip Pettit, *Preserving Republican Freedom: A Reply to Simpson*, 46 PHIL. & PUB. AFF. 363 (2019); Thomas W. Simpson, *The Impossibility of Republican Freedom*, 45 PHIL. & PUB. AFF. 27 (2017).

27. See PETTIT, *JUST FREEDOM*, *supra* note 17, at 113.

maintenance of relatively benign vertical domination is causally necessary in order to extirpate—or reduce to a tolerable minimum—the vicious horizontal domination just sketched.

In the scenario just indicated, republican justice calls for nondemocracy. Bringing it about that, so far as is possible in these circumstances, all members of society are securely free from domination with respect to the basic liberties requires supporting a nondemocratic regime. The assumptions needed to establish this conclusion should be plainly stated. First, we assume that even though domination is a multidimensional bad, we can roughly aggregate across the dimensions and arrive in some cases at all things considered judgments to the effect that situation *A* is better than situation *B* from the standpoint of domination reduction. Second, we assume that this sort of judgment can take the form of determining that here and now, elimination of horizontal domination in society does more to reduce bad domination than would eliminating vertical domination as far as we can. The third assumption is that, in specified circumstances, the regime that can effectively eliminate horizontal domination is a nondemocratic regime, not a democratic regime. A fourth assumption is there are no countervailing considerations, for example, that eliminating egregious forms of horizontal domination by tolerating nonegregious forms of vertical domination will not also bring along other evils in its train sufficient to outweigh these nondomination gains.

The preceding discussion is not seeking to recruit relational egalitarians such as Kolodny and Pettit to march under the banner of instrumentalism concerning democracy. They are not instrumentalists. For each of them, in somewhat different ways, democracy partly constitutes a relational egalitarian society—one in which, for Kolodny, social equality prevails, and for Pettit, relations of domination with respect to basic liberties are minimized. I am simply noting that if one started with a commitment to a best results standard for choice of political regime, one could adopt a relational egalitarian standard for assessing best results, and the resulting view would endorse nondemocracy, even when democracy would be feasible, in some circumstances, despite the fact that democratic political arrangements are partly constitutive of relational equality as well as prodigiously effective instruments for securing it in a wide array of circumstances. Moreover, by the same token, instrumentalism yoked to a relational egalitarian standard for assessing outcomes would, in some possible circumstances, endorse nondemocracy when other outcome standards would not. It could be that securing robust democratic arrangements would facilitate best results according to hedonism, or some other welfarist standard, or a Dworkinian ideal of equality of resources, whereas in the same circumstances, best results

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interpreted in relational egalitarian terms would favor nondemocratic over democratic arrangements.<sup>28</sup>

It should be mentioned that deontological issues arise, insofar as a best results theory, even if not interpreted as yoked to a consequentialist background moral theory, at least sets such background issues to the side. Consider Kolodny. His version of relational egalitarianism would respect the moral significance of a distinction between doing and allowing and would not, for example, endorse perpetrating one instance of slavery so that two others elsewhere would be averted. This point does not, so far as I can see, undercut my claims about the compatibility in some circumstances of maximizing fulfillment of relational egalitarian ideals and establishing and sustaining nondemocratic governance.

#### IV. FAIR PROCEDURES CAN REQUIRE NONDEMOCRATIC ARRANGEMENTS

The instrumentalist says, we should institute whatever form of political rule will generate best results, impartially assessed. If we say instead, fair procedures should play a role in the choice of what form of political rule to institute, and democracy is a uniquely fair political procedure, we might yet justify nondemocratic arrangements in some circumstances.

If we ask, how should we assess varieties of nondemocratic governance, the instrumentalist answer looks to be painfully obvious. We assess nondemocratic constitutions as we would assess any political regime. Any political regime is a tool, to be assessed entirely by the consequences, impartially assessed, of putting it in place and sustaining it, compared to available alternatives. That is it. Period. End of story.

One might claim: all the action is going to appear in conflicts about which purportedly impartial standard for assessing the outcomes to which various alternative political regimes might lead are actually sensibly impartial and substantively correct. But that cannot be right. Some say, democracy is an intrinsically fair procedure for resolving conflicts among people, independently

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28. A hedonist standard would assess political regimes as better or worse according to the total aggregate of pleasure net of pain brought about for members. A welfarist standard would assess regimes according to some function of the individual well-being attained by members. The Dworkinian equality of resources ideal is outlined by Ronald Dworkin. See generally Ronald Dworkin, *What Is Equality? Part 2: Equality of Resources*, 10 PHIL. & PUB. AFF. 283 (1981).

of the outcomes it generates, much as a coin flip is a fair procedure for resolving conflicts in some situations.

Notice though that one could accept that there are intrinsically fair procedures, and that we morally ought sometimes to follow fair procedures even at cost to outcome values, without accepting democratic proceduralism. For example, one might hold that if one has no choice but to impose a significant, indivisible good or bad on one of two persons, and there are no differences between the persons that warrant pushing the indivisible thing on one or the other of them, one ought to give each an equal chance of gaining the thing, if good, or avoiding it, if bad, rather than simply pick one or the other person as its recipient.<sup>29</sup> Accepting this, one might still dismiss the idea that democracy is intrinsically a fair procedure for determining what policies a state should pursue.

## V. SCENARIOS THAT MORALLY REQUIRE NONDEMOCRACY

Two examples illustrating scenarios in which nondemocracy, not democracy, would be morally required.

Here is a simple example to illustrate the claim that one does not have a moral right to participate in decisions about what a collective, of which one is a member, ought to do when one lacks competence to make good decisions for the collective. This is an illustration, not an argument. I am simply appealing to the reader's considered judgment. Suppose five people, by accident and without any prearrangement, find themselves in peril high on a mountain. The steepness of the slope makes it imperative that they be roped together. Three of the people are experienced mountaineers with track records of guiding people in various problematic situations to safety. Two are utterly inexperienced and lack mountain savvy. To move down the slope toward safety, the collective of the five roped-together individuals needs to make decisions about strategy and tactics that all accept and follow. The two inexperienced individuals propose that since all are equally affected by the collective decisions, all ought to have an equal democratic say in making those decisions. To this, the objection is made that no one has a moral right to insist on participation in decision-making where one's participation worsens the quality of the decisions and this imposes serious and avoidable costs on others. On this ground, the proposal is made that decisions be made by the trio of the experienced, competent members of the roped party. The trio members happen to be stronger, so they force the others to accept this proposal.

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29. See Peter A. Diamond, *Cardinal Welfare, Individualistic Ethics, and Interpersonal Comparison of Utility: Comment*, 75 J. POL. ECON. 765, 765–66 (1967).

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I am in solidarity with the trio in the situation as so far characterized. The morally correct policy is that the competent should rule in this setting. Someone might accept this verdict but hold that the example is too high stakes to enable us to determine whether there is some moral right, perhaps a fairly weak right, to participate in joint decision-making affecting one's life. The high stakes will make it difficult for us to discern the presence of a weak right, outweighed in the particular example.

In response, political decision-making that determines the content of state policies is a very high stakes matter. So even if there were a small pro tanto consideration favoring avoidance of imposed hierarchy, it would be outweighed when the issue is the choice of a form of governance for a political society in our world.

We could also fiddle with the example to lower the stakes. Let the slope be not so steep, soft snow everywhere, and the consequences of following a mistaken route merely broken bones or an extra night of agony in the extreme cold. I submit that we should still discern no right to a democratic say based on the moral imperative of hierarchy avoidance.

Notice that the case for elite rule here need not rest on a controversial acceptance of paternalism—the claim that it is morally acceptable to restrict people's liberty against their will for their own good.<sup>30</sup> In this example, and more generally when what is on offer is choice of a form of governance for a country, the restriction of people's liberty that is being endorsed is restriction of their liberty for the good of other people. To make this vivid, suppose that in the mountain peril example, it is possible for one or two individuals to go their own way down any of several alternate paths, at slight extra risk to themselves, and no cost imposed on those left behind on the rope, which can function well with just three roped together. Suppose the two recalcitrant community members are at liberty to go it alone in this way—or even if this scenario is not possible, we could suppose that all are disposed to offer the go it alone option to anyone who would choose it, even if this was a self-harming choice for that person, if it were the case that this possibility were actual.

Another reasonable objection to this stilted example as a good intuition pump for eliciting considered judgments about the moral quality of hierarchy is that the situation described is a temporary emergency. One might

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30. Gerald Dworkin, *Paternalism*, STAN. ENCYCLOPEDIA PHIL., <https://plato.stanford.edu/entries/paternalism> [http://perma.cc/SU62-DRLG] (last updated Feb. 12, 2017); see Joel Feinberg, *Legal Paternalism*, 1 CAN. J. PHIL. 105, 107–08 (1971).

reasonably tolerate an autocracy in an emergency that would be intolerable if extended over a long time frame. In response, let the mountain be very tall and progress down it, by necessity, very slow. As one gradually gets lower, conditions become more salubrious, but one never gets off the mountain. One's life will consist of descending with one's four thrown-together companions. All else equal, this shift does not worsen the case for autocracy. Or at least, if there is a problem in the revised example, it stems from the small numbers involved. But this is an artificial detail in the admittedly contrived mountain peril example.

The small-scale scenario involves persons who, even though strangers before being thrown together, are pressed into intimate personal contact. This feature of the example is heightened in the variant in which the persons roped together must spend years of their lives in prolonged close contact. In the revised example, it becomes necessary for political superiors and inferiors to live their lives in close, intimate proximity to each other. One might believe that imposed hierarchy in personal relations is either bad in itself or tends in several unavoidable ways to give rise to bads. In contrast, political hierarchy is, or need not be, a face to face encounter. It is a long-distance encounter operating through impersonally mediated channels. If we imagine a scaled up version of the mountain peril example with large numbers, no one need accept a boss in their intimate private life, in order to reap—what we are assuming to be are—the benefits of political decision-making when entry to the club of decision makers is restricted.<sup>31</sup>

My disinclination to feel personally bullied by government legislators who pass bills I dislike has not much to do with the possible fact that I had a democratic say in their selection and instead arises from the fact that I do not have any personal contact with these legislators, much less regular personal contact. So even if one thought hierarchy in close personal relations is always bad, that is consistent with denying that hierarchy in large-scale interactions at a distance must be bad.

Here is another type of example that sheds light on the conditions that render nondemocratic rule morally acceptable and submission to nondemocratic rule morally required. Suppose a boatload of refugees sinks offshore from a beach on which sunbathers are congregated. Many refugees are suddenly in peril of drowning. Let us assume, as is surely plausible, that all of the

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31. To clarify, here I do not make any commitment to the claim that hierarchy is bad in itself in close personal relationships, or that hierarchy in such relationships always brings in its train bads that outweigh goods. My claim is merely that holding that view would be no bar to also holding that basic political arrangements should be set in whatever way, hierarchical or not, that would produce the morally best outcomes. That arrangements should be set in this way is compatible with the existence of moral side constraints limiting the acceptable means to bring about the setting in place.



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sunbathers able to help are morally obligated to help rescue those in peril, at least to the extent that can do so at reasonable cost and risk to themselves, taking into account what is at stake for those in danger of drowning just offshore. Here, we can stipulate also that if all participate in the rescue effort in an efficient cooperative manner, the costs of rescue that fall on each of the rescuers decreases. Let us assume further that whatever limited obligation one has to make sacrifices to those in peril, one does not fulfill the obligation by making ineffective, inefficient efforts to help. Beseeching the ocean gods, hugging other sunbathers present at the scene and comforting them, swimming into shark infested water when there is a safe boat available for rescue service near at hand, and so on, would not fulfill the duty to rescue as it applies here.

Now add another feature. Perhaps a subset of those persons near the site of the emergency have lifeguard training. So, it is the case that some persons present at the scene, and they alone, are competent to organize those present quickly into an effective team that can save all of those in peril without imposing excessive cost or risk on any potential rescuers. The condition for this to occur is that the sunbathers, recognizing the need to submit to the authority of the competent and take orders from them, do so. In this situation, one has a duty to take effective steps to facilitate rescue of those in peril, and to fulfill this duty, one must obey the commands of a competent few who have asserted a claim to be obeyed on this basis. In this scenario, I submit, the duty to assist those in peril generates a further duty to accept the authority of the competent and obey their commands.

The extension of the lesson of the beach example to the conclusion that, in some conditions, one lacks a right to a democratic say and moreover has a duty to submit to well-functioning nondemocratic rule is straightforward. Anarchy is a disaster. Living in proximity to others in the absence of a functioning government that commands a mostly effective monopoly on the use of violence creates excessive risk of harm and especially risk of harm to vulnerable persons, those susceptible to predation. In this situation, one has a duty, when one can do so at reasonable cost, to join with others to establish a well-functioning government or to cooperate with others to sustain it if one already exists.<sup>32</sup> If—big if—to be well functioning in the circumstances, any government must be nondemocratic, one has a duty to cooperate with nondemocratic political arrangements.

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32. See Christopher H. Wellman, *Liberalism, Samaritanism, and Political Legitimacy*, 25 PHIL. & PUB. AFF. 211, 219–23 (1996).

Notice also that the view being defended here would be misstated if formulated in terms of a right of the competent to rule. Consider this argument for rule by the competent stated by David Copp. To clarify, he does not himself endorse the argument:

- (1) There are political truths.
- (2) The members of a small intelligentsia have much better knowledge of the centrally important political truths than anyone else.
- [(3) If someone has knowledge of the centrally important political truths, and is not otherwise disqualified—by being selfish or corrupt—then she has a claim to a share in the ruling of society, and no one who lacks such knowledge has any such claim. Therefore:]
- (4) The qualified members of the intelligentsia, and they alone, have a claim to share in the ruling of society.<sup>33</sup>

There is a slide in this argument from positing that some have much better knowledge than others to a positing that some have “knowledge of the centrally important political truths.”<sup>34</sup> That some have better knowledge than others is compatible with holding that those with lesser knowledge have knowledge about centrally important truths that are crucial input for good decisions. Wisdom of the crowd considerations could block acceptance of three and four given that one and two are accepted.

Copp’s second point might be doubted on the ground that there is no small, stable group of people who know the centrally important political truths needed for sound choice of laws and other public policies. The key political truths might be widely different, depending on what issue is under review. The small group might be variable from decision to decision. What truths are key to decision-making might shift in unpredictable ways over time, and sometimes suddenly and discontinuously.

But the crucial reason for rejecting three is that it is fully compatible with this possible scenario: Some selfless and noncorrupt people have full knowledge of the entire set of centrally important political truths relevant to political decisions that need to be made, but nonetheless best results would be reached by not assigning these people political power and instead giving an equal democratic say to all settled adult members of society. That is, rule by experts might deliver better laws and public policies but generate bad results in other ways. Giving the people the franchise might tend to encourage widespread public spiritedness, or facilitate society

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33. David Copp, *Could Political Truth Be a Hazard for Democracy?*, in *THE IDEA OF DEMOCRACY*, *supra* note 5, at 101, 107.

34. *Id.* at 106.

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wide solidarity and willingness to cooperate for the common good.<sup>35</sup> A democratic society might end up with worse laws and better lives for people, or greater overall rights fulfillment, over time, compared to what rule by experts would tend to bring about.

It does not follow from the fact that there are identifiable political experts, as asserted by Copp's first and second points, that they have a right to rule—claim three. According to the best results theory, simply being a member of a political society does not give one a right to a share in political decision-making, because denying one such rights may bring about expectably better results. According to the best results theory, being a political expert among nonexperts does not give one a right to a share, much less a preponderant share, in political decision-making, because denying one such a right may bring about expectably better results.<sup>36</sup> Competence matters just insofar as assigning special power to its possessor would bring about better outcomes.

#### VI. DEMOCRATIC POLITICAL ARRANGEMENTS MIGHT PRECLUDE FULFILLING RAWLSIAN PRINCIPLES

A liberal society, one fulfilling Rawlsian principles of justice but for its insistence on political democracy, could be nondemocratic. In some possible circumstances, choice of democratic political arrangements might preclude fulfilling these Rawlsian principles as fully as we could, if we opted instead for nondemocracy.

The right to a democratic say is the claim that each adult person has a right to be a full member of some political society, entitled to run for office and vote—on a one person, one vote basis—in free and fair majority rule elections that directly or indirectly determine the content of the laws and policies that the government enforces on all members of society.

A society might be more or less democratic along several dimensions of assessment:

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35. For speculation to this effect, see JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 45–69 (H. Holt 2014) (1861). Jason Brennan suggests that Mill's speculation has not been empirically confirmed in the study of actual democracies, but the questions we really need to resolve here are counterfactual: would indirect effects—those not operating through quality of laws—of the operation of various democratic systems over time in a given society likely be better than what would ensue from feasible nondemocratic alternatives. See JASON BRENNAN, *AGAINST DEMOCRACY* 54–73 (2016).

36. This paragraph rehearses an argument advanced in my previous work. See Arneson, *Elitism*, *supra* note 5, at 169.

- (1) The more it is the case that freedom of expression regarding public affairs and matters that might bear on public policy prevails in society, other things being equal, the more democratic the society.
- (2) The more it is the case that freedom to associate with likeminded individuals to seek to advance ideas about how we should live and how we should organize our common life prevails in society, the more democratic it is, all else equal.
- (3) The more it is the case that permanently settled adults can establish citizenship in the political society they inhabit, citizenship including the franchise, the more democratic the society, all else being equal.
- (4) The more it is the case that the legislation and governmental policies administered and enforced in a particular political society are controlled by elections in which all votes are equal and the election process is free—no intimidation or extortion of political opponents, and so on—the more democratic the society, all else being equal.
- (5) The greater the allowable scope for majority rule decision-making, the more democratic the society, other things being equal. If some types of issue—like war and peace, foreign policy, free speech, nondiscrimination—are not permitted to be settled by majority rule decision-making, that restriction lessens the allowable scope for majority rule decision-making.
- (6) The more it is the case that the present will of the majority of citizens can be made effective in the formation of public policy and the choice of public officials, the more democratic the society, all else being equal. The shorter the time lag between shift of majority rule and corresponding shift in public policy, the more democratic the society, all else equal.
- (7) The more it is the case that any adult citizens with the same political talent and the same willingness to spend political resources and personal energy to influence the outcomes of the political process have the same chance to influence the outcomes of the political process, the more democratic the society, other things being equal. This is the equal opportunity for political influence ideal. If your political convictions happen to be closer to the preexisting political opinions of most people in society than another's, and you have greater chances of influencing outcomes of the political process for this reason, this inequality of opportunity does not prevent the other person and you having equal opportunity for political influence in this matter.

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The first two dimensions of assessment, free speech and freedom of association, do not by themselves make a society as democratic even by a bit. Rather, once majority-rule voting procedures—three and four above—are in place, at least at some threshold level, a society is more democratic, the more it is the case that all seven conditions listed are fulfilled. To determine how democratic a society is overall on this conception, one would have to assign proper weights to the seven dimensions, a task I do not attempt.

Against these stipulations, one might object that they capture, if anything, majoritarianism—let the majority rule—not the ideal of constitutional or republican democracy, which is shaped by an aspiration to limit majority rule in order to guard against tyranny of the majority. In a constitutional democracy, there is a constitution that includes separation of powers across branches of government and a substantive bill of rights protecting fundamental liberties, with the constitution being interpreted by judicial review that limits to some extent the laws and policies a majority of voters can enact.

I think it is worth considering democracy fundamentally as majority rule, direct or indirect, with an equal franchise for all adult members of society. A constitution with a bill of rights administered by judicial review that aims to ensure a genuine democratic say for all members of society over time, as theorized years ago by John Hart Ely, is not an alternative to majoritarian democracy but rather essentially a means for sustaining it over time.<sup>37</sup> But if constitutional democracy is understood as it usually is, as a means to insulate some substantial norms such as a conception of individual liberty against majority rule, we really have a mixed view. There is nothing in the basic idea of rule by the people that says that rule by the people must conform to some further substantive norms, and whatever further norms you endorse, you could incorporate them in a nondemocratic alternative to democracy.

## VII. EPISTOCRACY

To illustrate this possibility, we can envisage a political regime that is robustly nondemocratic, a state in which one political party holds a monopoly of political power. Recent empirical study of nondemocratic political regimes has focused on the phenomenon of semi-democratic states, in which there

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37. See generally JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (1980).

are elections and trappings of democracy but elections are not free and fair and the ruling political party uses its control of state power to maintain itself in power by jailing opposition leaders, restricting press freedom and using state owned media as propaganda outlets promoting the party in power, rigging elections, and so on.<sup>38</sup> Recent normative theory discussion of nondemocratic governance structures has focused on epistocracy. The term refers to a range of possible political arrangements designed to restrict the democratic franchise to members of society who are superior to others in knowledge and political competence. The locus classicus of the proposal is the plural voting scheme endorsed by J.S. Mill in his *Considerations on Representative Government*. In this scheme, all citizens have a vote, but those who are more highly educated or who pass a competence exam are assigned extra votes.<sup>39</sup>

The beauty of epistocracy is that, without having to make any claims about the substantive content of the justice principles that a government should seek to fulfill, we identify a procedure that is claimed likely to bring about political decision-making that will enact laws and policies that will be more likely than feasible alternative procedures to achieve morally correct results, whatever they might be. The procedure seeks to give extra power to the competent, and the competent will identify what justice requires here and now and press for that.

The down side of epistocracy is that whatever we believe is the particular set of moral principles that a government should seek to fulfill, it is hard to see how any content neutral test for competence will tend to give extra power to people who are likely to press for *that*. This is not a problem if we can be assured that we can identify a test that will pick out not just people who are politically competent in a neutral sense, good at strategic reasoning, good at means ends calculation, knowledgeable about public affairs, and so on, but more importantly people who are normatively competent, able to identify justice and truth whatever they might be. After all, neutral political competence could be harnessed to bad ends as easily as good ends. But a neutral test for normative political competence seems elusive. At least, we do not have a clue how to construct such a test.

This is far from a knockdown objection to the range of epistocracy proposals. But there is a broad alternative—seeking to put in power a political party that is dedicated to a particular conception of justice with the best evidence

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38. See, e.g., STEVEN LEVITSKY & LUCAN A. WAY, COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR 3 (2010).

39. See MILL, *supra* note 35, 155–80. The proposal is discussed throughout various works. See generally BEITZ, *supra* note 5, 31–48; JOHN RAWLS, A THEORY OF JUSTICE (original ed. 1971); Arneson, *Elitism*, *supra* note 5, at 156–84; Jason Brennan, *The Right to a Competent Electorate*, 61 PHIL. Q. 700, 701 (2011); Estlund, *supra* note 14, 53–55.

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relative credentials we can secure.<sup>40</sup> Call this the Bolshevik strategy. As carried out by Bukharin, Stalin, and the Soviet Communist apparatus, it has, to put it mildly, a horrible historical track record.<sup>41</sup> But a one party regime need not be illiberal. As Jason Brennan observes, as a conceptual matter a democracy can be illiberal and a nondemocracy can be liberal—notwithstanding the fact that democracy has a much better track record in protecting civil and personal freedoms than autocracies and dictatorships.<sup>42</sup>

For concreteness, imagine a political party committed to promoting justice as fairness, as elaborated by John Rawls, succeeds in gaining a monopoly of political power. The Rawlsian Justice Party rules. Or better, we should label the group Quasi-Rawlsian Justice Party (QRJP), because it eschews democratic rule. Recall Rawls's principles encapsulating justice as fairness:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
- b. Social and economic inequalities are to satisfy two conditions: [F]irst, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.<sup>43</sup>

The second part of this second principle is called the “difference principle.”

The equal basic liberties are those that must be secured to enable people to develop and exercise their two fundamental moral powers to cooperate with others on terms recognized as fair and to adopt, pursue, and perhaps

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40. The idea is that a form of political governance might bring about better results than democracy not by specially empowering experts, but by specially empowering those with a particular view of justice. The acceptability of this claim—for those who do not see it as immediately beyond the pale—would clearly depend on the moral quality of the view being empowered. The Quasi-Rawlsian Justice Party, perhaps; the Quasi-Hitlerite Justice Party, not so much. One could also imagine a regime that could appeal both to a meritocracy justification and a morally superior ideology justification to argue for its moral acceptability. I assume a superior ideology attempt at justification could be made compatible with fallibilism, the view that any moral doctrine asserted at any given time is open to refutation on the basis of future moral argument and is very likely to be at least partly wrong. The claim would be that, for now, on the evidence and argument now available, there is sufficient reason to enact *this* rather than other candidate doctrines.

41. See PIPES, *supra* note 4, at 343–81.

42. BRENNAN, *supra* note 35, at 1–8.

43. JOHN RAWLS, *POLITICAL LIBERALISM* 5–6 (2005); see RAWLS, *supra* note 39, at 266.

revise a conception of their good. They are specified by a not necessarily complete list:

[P]olitical liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person [which includes freedom from psychological oppression and physical assault and dismemberment—integrity of the person] . . . along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.<sup>44</sup>

Fair equality of opportunity is satisfied in society just in case all those with equal native talent and ambition have the same prospects of success in competitions for specially advantageous positions. The fair value of political liberty is secured just in case all those with equal political talent and political ambition have the same prospects of attaining public office—so being born in one or another economic or social class does not affect one's chances of being politically influential. The goods that justice secures are primary social goods, general-purpose resources. Finally, the equal liberties principle has strict lexical priority over the principle regulating social and economic inequalities and, within that principle, fair equality of opportunity has strict lexical priority over the difference principle.

If you subtract democratic rights from this set of principles, what remains as the program of QRJP? For starters, fair equality of opportunity (FEO), the difference principle, and the priority of FEO. The difference principle might be interpreted as requiring maximization of the social and economic primary goods prospects of the social group worst off in this respect.

Perhaps more important, justice as fairness minus political democracy rights still affirms a strong doctrine of equal basic liberties. These include freedom of speech and assembly—and association—liberty of conscience and freedom of thought, freedom of the person as stated, the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. QRJP also affirms lexical priority of equal basic liberties over the principle regulating distribution of social and economic benefits.

The fair value of political liberty might seem to be extinguished since the political liberty in question is the freedom to stand for office in free and fair elections. But a version of fair value of political liberty can remain in Rawlsian justice shorn of its democratic commitment. We are envisaging that a political party committed to Rawlsian justice has a monopoly of political power. But this is compatible with the insistence that membership in this organization, and the opportunity to rise in its ranks, is regulated by a shadow of fair equality of opportunity: all those with the same native talent

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44. RAWLS, *supra* note 39, at 61.



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and the same ambition to be influential in advancing Rawlsian justice have the same prospects of securing membership in QRJP and of rising to positions of greater influence.<sup>45</sup> For other citizens, we can borrow Rawls's idea of a decent consultation hierarchy, and affirm that all members of society have an equal right to assemble and organize and proselytize for their ideas and to petition government and present grievances and proposal as input to the deliberative governmental process, all with equal native talent and equal political ambition having equal opportunity to be influential in this consultative process.<sup>46</sup> I acknowledge this mimicry of the fair value of political liberty will seem Pickwickian to committed democrats.<sup>47</sup>

Rawlsian basic liberties might strike us as thin in their guarantees of personal freedom and economic freedom.<sup>48</sup> Rawls stipulates that freedom

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45. Daniel Bell interprets the current Chinese regime as seeking to justify its rule as legitimate, in part on the ground that the Chinese Communist Party is a meritocracy, so those who exercise political rule are those selected as most qualified to rule. DANIEL A. BELL, *THE CHINA MODEL: POLITICAL MERITOCRACY AND THE LIMITS OF DEMOCRACY* 1–2 (2015). Bell does not hold that this claim to being a meritocracy is warranted or that the Chinese regime is overall legitimate. *See id.* More tentatively, he suggests that a political order that qualifies as a genuine meritocracy, but fails to be democratic, might qualify as morally legitimate. *See id.* at 179–98. In passing, I note that according to an instrumentalist or best results approach, a political society could conceivably be a perfect meritocracy, yet be morally unacceptable. This situation would exist if putting the most qualified people in positions of authority brings about worse results, impartially assessed, than would be brought about instead by alternative feasible political arrangements.

46. For the idea of a decent consultation hierarchy, see JOHN RAWLS, *THE LAW OF PEOPLES* 71–75 (1999).

47. The nondemocratic state will rely on commanding sufficient military and police force to be able to protect itself from external and internal aggression and to elicit sufficient compliance with its laws and public policies so that the society is well functioning. This necessity may put pressure on the extent to which FEO can be implemented. Consider top military officers. If they lack allegiance to the regime, the threat of a military coup arises. So maybe an ideological test must be prerequisite to gaining a top military post? In this case, the competition for this post will, at most, satisfy a constricted version of FEO. With this restricted version of FEO in place, all those with the same native talent and same ambition, with ambition broadly understood to include ambition to advance the Rawlsian program, have the same prospects of success in competitions to fill political posts. If the regime has a sufficiently shaky grip on power, the need for security may end up greatly eroding the level of equal basic liberty provision the QRJP program promises. Maintaining regime security can require severe repression. *See generally* Tiberiu Dragu & Adam Przeworski, *Preventive Repression: Two Types of Moral Hazard*, 113 AM. POL. SCI. REV. 77 (2019). The response here is that if a state can only maintain itself by unjust restriction of individual liberty, the state should give way, allow it to be replaced by another. “Justice” delivered by gulags is not justice.

48. John Tomasi argues that thick economic freedoms such as the right to own private property in the means of production, the right to start and operate a business enterprise

of the person prohibits a command economy and requires that all citizens be able to compete for employment in a labor market offering a wide array of positions.<sup>49</sup> One could strengthen this requirement of economic freedom by requiring that individuals have freedom to trade as they choose with property they legitimately possess on a competitive market, and strengthen this requirement of personal freedom by requiring that individuals must be free to live as they choose so long as they do not thereby harm others in certain specified ways that violate their rights.

The discussion in this section illustrates a general point. Rejecting the claim that there is a fundamental moral right to a democratic say and that making society more democratic does not, in itself, make the society more just is compatible with affirming any of a wide range of accounts of the substance of social justice, fundamental level morality. Rejecting democracy, one can be committed to a robust set of liberal egalitarian and broadly democratic values.

#### VIII. IN REAL-WORLD CONDITIONS, SHOULD OUR COMMITMENT TO DEMOCRACY BE HEDGED?

Are the conditions in which nondemocracy would be likely to outperform democracy by justice standards so empirically unlikely to obtain as to render the issue, to what extent should we be committed democrats, not worth discussing? Maybe, maybe not.

The discussions in this Article may strike some readers as akin to prolegomena to a theory of Santa Claus and the Easter Bunny. Santa Claus and his reindeer, as standardly characterized, provide a normatively attractive, or at least normatively plausible system for delivering toys to children at Christmas with great efficiency and fairness. Recall: “[H]e’s making a list, he’s checking it twice, he’s gonna find out who’s naughty or nice, Santa Claus is coming to town.”<sup>50</sup> But the theory is not worth discussing because it is so empirically far-fetched. Same goes, perhaps, for the characterizations of conceivable, just nondemocratic political regimes. What is the point?

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with willing investors and employees, and the right to profit from money lending should be included among Rawls’s equal basic liberties. See JOHN TOMASI, *FREE MARKET FAIRNESS* 16–17 (2012). This is a tricky call, given that in Rawls’s scheme, the equal liberties principle, has strict priority over the other principles of justice. This means no restriction of any basic liberty to gain any amount of nonbasic liberty justice value. The right inference here may be that the lexical priority idea should be deleted in the most plausible formulation of Rawlsian principles. See *id.* at 216–19.

49. RAWLS, *supra* note 39, 271–76.

50. FAITH HILL, *Santa Claus Is Comin’ to Town*, on *JOY TO THE WORLD* (Warner Bros. 2008).

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First, I am not presenting an instrumentalist case for nondemocracy. I am for democracy, on instrumental grounds. Nor am I suggesting that normatively attractive nondemocratic forms of governance are feasible or likely to be so in the near future, or that a morally sensitive cost and benefit calculation pushes extant nondemocracies toward the top of the list of viable choices.<sup>51</sup> However, the twenty-first century may present decision problems that call for authoritarian solutions.

Climate change due to greenhouse gas emissions threatens to unleash great harms in the future. The magnitude and distribution of these harms depend on what policies political societies pursue over the coming decades.

As many have noted, the climate change problem combines issues about justice between generations and global distributive justice. The latter problem is exacerbated for those who hold any of a wide range of moral views that imply that, independent of the climate change issue, there is a moral imperative to facilitate the economic development of poor countries. The natural result of the economic development of poor countries is greatly increased greenhouse gas emissions. Viewed in this light, the problem becomes, how to bring about worldwide cooperation across all nations and peoples of the world that will prevent greenhouse gas emissions from bringing about too much global warming and, consequently, vast harm to future generations, mitigate the costs of global warming that will nonetheless ensue and especially prevent these costs from bearing severely on worse off inhabitants of the Earth and, in particular, the global poor, and also robustly facilitate economic development that brings stable prosperity to poor countries and especially to the global poor.

Stated baldly, the problem looks to be obviously insoluble. To be sure, one can draw up solutions on paper, but what looks insoluble is the problem of finding some ethically decent solution that stands a chance of being implemented. Implementation of a solution would require global regulatory governance, and the international order shows no signs of delivering such governance in the coming decades.

If one tries to imagine a course of events that is at all likely to occur and that would to some degree address the problem, one pictures a brutal exercise of big power politics. Future climate change unleashes catastrophes that

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51. My wishy-washy championing of Bukharinism in the opening paragraph is limited to favoring Bukharinism as elaborated by his biographer over Stalinism as actually practiced. This leaves open the possibility that a still better option in the 1920s would have been a Bolshevik abdication of power at that time, and definitely leaves open the possibility that upending the shaky beginnings of Russian democracy back in 1917 was unjustified.

impel powerful nations to seek some means of averting further catastrophes. The world's big powers as they will be thirty or fifty or eighty years from now work out a deal that prevents greenhouse gas emissions from bringing about a future parade of horrors. They work out a deal that is very much to their interests, and likely very much to the disadvantage of the rest of the world and especially its poorest and weakest nations and their inhabitants. The big powers enforce this deal on the rest of the world, using their military superiority to coerce most of the world's inhabitants into compliance. In this imagined scenario, the leaders of the big powers are not motivated by altruistic concern for distant future generations or for the then contemporary global poor. The leaders of each big power are motivated to protect the interests of their current members' interests and the members of their near term future generations. With luck, the interests of more distant future generations ride along on the interests of near term generations. The process is brutal and the outcome manifestly unfair, yet superior to possible future courses of events in which no such big power grand bargain is reached. One such future course of events involves devastating wars among big powers struggling for advantage on a hotter planet.

Another conceivable route to a grand bargain among nations would be an international treaty. To be effective, such a treaty would have to encompass almost all nations, or else processes that emit greenhouse gases would migrate to countries that do not sign the treaty. The treaty could adjust to provide sweetened terms to holdout nations, but this would encourage holding out, or belated backing out of the treaty if one initially signed on. Presumably, a sufficiently strong coalition of nations could coerce nations that have not signed into joining up. The prospects of such an international negotiation are hard to gauge. For democratic nations, signing on incurs significant costs to be borne by present members of society for the sake of avoiding the imposition of harms on future generations and contemporary distant needy strangers in poor countries.<sup>52</sup> Can we expect democratic voters willingly to incur the morally necessary sacrifices?

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52. This claim needs defense. John Broome has observed that, given the enormous costs that will fall on future generations if greenhouse gas emissions are not checked, it is possible to devise a treaty now according to which present people reduce greenhouse gas emissions, and also better themselves in other ways that impose costs on future generations, in such a way that no one is made worse off by this treaty and some are made better off, now and in future. See JOHN BROOME, *CLIMATE MATTERS: ETHICS IN A WARMING WORLD* 190 (2012). Moreover, given the enormous gains that suitable greenhouse gas emission reduction will bring about, most people can be made significantly better off by the treaty. See *id.* at 187–92. For somewhat related discussion, see ERIC A. POSNER & DAVID WEISBACH, *CLIMATE CHANGE JUSTICE* 189–92 (2010).

[VOL. 56: 1, 2019]

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Of course, identifying a possible problem with standing fast by democracy no more implies some nondemocratic alternative would be superior than identifying a problem of market failure automatically makes a successful case for government regulation to correct the problem. To make progress, we need future events to resolve uncertainty to the point that analysis could usefully commence of when a person on horseback promising to dispense with democratic dithering should be followed.

