

In Democratic Space

Lecture 4 Implementing Public Rule

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Plan of lectures

1. The rule of the populace. Electorate.
2. The rule of the people. Corporate.
3. The rule of the public. Citizenry.
4. Implementing public rule.

A third model

Under the electoral model of democracy
the gov't 'we' is the we of ascription.

Under the corporate model,
the gov't 'we' is the we of avowal.

Under the civic model,
the gov't 'we' is the we of aspiration.

It is used with the aspiration to speak for..

A third model 2

Think of the presumptive voice in which
one of us may claim to speak for all.

This will not necessarily be presumptuous
so far as the presumption is grounded.

And it will be grounded to the extent that
a. the presumption is open to test and
b. is likely to survive testing.

A third model 3

This applies to the government voice
under democracy as public rule.

The government can presume
to speak for the people so long as
it can claim not to be presumptuous.

And it can credibly make this claim
if it is subject to public control.

The control required

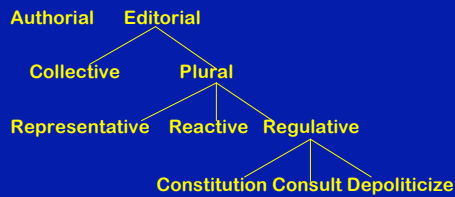
But what can ensure public control?

What can subordinate government to
the rule of public pre-judgments?

Gov't will have to be able to claim that
it is the designated spokesperson; and
speaks under suitable constraints.

So how to authorize and constrain gov't?

Democratic Controls



Authorial & Editorial Control 1

The analogy with a journal or newspaper.
 Authorial control belongs to the writer or the person with a ghost-writer.
 Editorial control belongs to the editor, or to the owner of the publication.
 The people are to author/authorize and, in a second role, to edit

Authorial & Editorial Control 2

Both forms of control may be:
 direct or indirect,
 as with writer/ghost, editor/owner;
 Editorial control may be active or virtual,
 i.e. hands-on or arm's length.
 Note: virtual control may be effective
 in monitoring, in inhibiting, or both.

Authorial & Editorial Control 3

	Authorial	Editorial
Active-direct	1.	2.
Active-indirect	3.	4.
Virtual-direct		5.
Virtual-indirect		6.

Democratic authorial control 1

The public authorizes state 'authorities' to legislate, administer, and adjudicate.
 Is this sort of control effective?
 Yes, so far as it blocks dynastic control; it identifies the designated spokesperson.
 But otherwise, only to the extent that electoral arrangements allow.

Democratic authorial control 2

How far is that? As far as reforms protect electoral demand, supply and choice.
 Some obvious areas of reform are
 demand: polls, votes, districts, rules;
 supply: public 'funding' of parties;
 choice: campaign finance, transparency in gov't, restraints on lobbying.

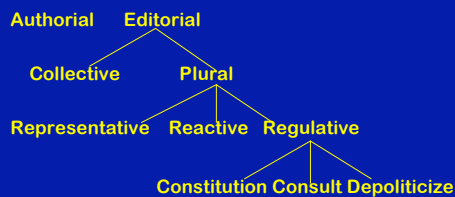
Democratic authorial control 3

The public also authors laws in referenda.
Isn't this a perfect authorial control?
The referendum has limited use only.
First, the public in itself is non-agentive
and cannot serve as a group-agent.
Second, it can empower majority interest,
temporary passion or moralism.

Democratic editorial control 1

Collective editorial control is assured
via the electoral system itself and
via recourse to occasional referenda.
But what of plural editorial control?
What of control that is exercised
either by individuals or groups?

Democratic Controls



Representative editing

Parliamentary and other opposition
Social movements and factional lobbies;
the difference in reasons invoked.
The need for publicity to distinguish them
and the role of impartial media;
the case for a public broadcaster.
The division of civic virtue.

Reactive editing

The courts and other tribunals;
rights commissions and ombudsmen.
The different powers of these forums.
Public opinion and the role of the media.
The economy of esteem.
The dynamic of scandal.
Public demonstration and disobedience.

Regulative editing

Regulation is anticipatory editing;
it forestalls or pre-empts contestation.
It thereby reduces the editorial burden,
and can indirectly facilitate contestation.
Three forms, by analogy with journal:
rules to guide those authorised;
opportunities to consult with editor; and
institutional constraints on discretion.

Constitutional rules 1

Domain: the how and what of gov't action.
The how: they should prescribe rules for the formation and practice of gov't.
These should empower the people, and restrict suitably the power of gov't.
Election, rule of law, division of powers...
The what: they should establish 'rights'.

Constitutional rules 2

They should themselves be subject to amendment, perhaps burdensome.
The case for counter-majoritarianism.
They should be subject to adjudication, by any of a variety of means.
The case for and against judicial review.

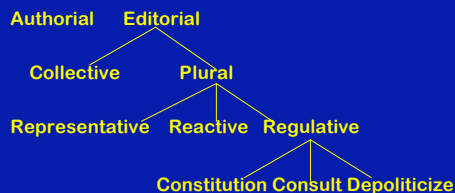
Consultative procedures

Government should be enabled or forced to consult with the public as needs be.
Consultation should be in public.
Consultation should be open to all.
Consultation should ideally engage all, despite organizational problem.
The deliberative opinion poll solves this.

Constraints on discretion

On some issues those elected to speak are exposed to non-public motives.
Nemo iudex in sua causa: interest rates, districting, auditing, statistics
Hence the need for statutory officers: in effect, depoliticization.
The case of extensions? Criminal justice?

Democratic Controls



In sum

The public are to rule via government, by authorizing and constraining gov't.
The idea is to empower public reason by depoliticizing government
The public rules itself so far as publicly valorized ideas rule.
The re-publique must not be a re-totale or a re-privee.