

2024 Royal Society of New South Wales and Learned Academies Forum: “Threats to Democracy”

Thursday, 14 November 2024
Government House, Sydney

Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales

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Opening Addresses

Her Excellency the Honourable Margaret Beazley AC KC

*Bujari gamarruwa, Diyn Babana,
Gamarada Gadigal Ngura*

I greet you in the language of the Gadigal people, the Traditional Owners of the land on which Government House stands. I pay my respects to their Elders past, present and emerging. To everyone in the room, and those watching online, I welcome you all to Government House this morning for the 2024 Royal Society of NSW and Learned Academics Forum, “Threats to Democracy.”

This year’s Forum could not have been more aptly named or timed. 2024 has been described as the “ultimate election year.”¹ By year’s end, there will have been elections in more than 70 countries, representing almost half the world’s population (49%).² And

yet, less than 8% of the world’s population lives in what might be described as a “full democracy.”³

Taking as a premise, at least in the Western world, that representative democracy provides the best form of government, there is nonetheless significant dissatisfaction with how democracies are working. The Pew Research Center, since 2017,⁴ has recorded an overall decline in levels of satisfaction with democracy. Despite a brief bounce back in 2021, where a median of 49% of those surveyed were satisfied with the way their democracy was working, today the number is 36%.⁵

Accepting that there will be differing reasons for this low level of satisfaction in

¹ <https://time.com/6550920/world-elections-2024/>

² <https://time.com/6550920/world-elections-2024/>; see also: <https://edition.cnn.com/2024/07/08/world/global-elections-2024-maps-charts-dg/index.html>

³ EIU Report, *Democracy Index 2023*: https://www.eiu.com/n/campaigns/democracy-index-2023/?utm_source=ciu-website&utm_medium=blog&utm_campaign=democracy-index-2023

⁴ It looked in detail at “12 economically advanced democracies.” The 12 nations are: Canada, France, Germany, Greece, Italy, Japan, the Netherlands, South Korea, Spain, Sweden, the UK and the USA. But, overall, respondents in 31 countries were surveyed. See: <https://www.pewresearch.org/short-reads/2024/06/18/satisfaction-with-democracy-has-declined-in-recent-years-in-high-income-nations/>

⁵ <https://www.pewresearch.org/short-reads/2024/06/18/satisfaction-with-democracy-has-declined-in-recent-years-in-high-income-nations/>

different countries, a number of common factors emerge. Three are of particular relevance. The first is the economy. How people feel about the way their democracy is working is “strongly related to how they believe *their economy* is working.” Second, how people feel about the governing party — “are they doing enough for me; do they understand me?” Third is the level of education: the lower a person’s level of education, the less satisfied they are with the way democracy is working compared to those who are better educated.⁶

When people are asked what they think would improve democracy, simply put, the answer is: *politicians*. People want “politicians who are more responsive to their needs (which is why the economy features so significantly) and who are more competent and honest.”⁷ Wider representation among politicians was also cited: in particular the narrow “white wealthy male” category came in for criticism by respondents from different democracies across the globe — but that doesn’t explain democracy in the United States, and I don’t only refer to the President-elect. The President could equally be so described. The difference there of course was in political outlook.

In Australia, 60% of those surveyed were found to be satisfied with our democracy.

That, in my view, is not a high level of satisfaction, given that a candidate with over 50% of the vote determined on preferences is elected. One might ask whether, overall, these statistics indicate merely complacency about our political system, or should it be seen as a Red Flag — a warning that our democracy cannot be taken for granted?

Perhaps, unsurprisingly, some of the starkest statistics come from the US, where the latest survey found that 68% were *dissatisfied* with their democracy. Also unsurprisingly, according to *The Economist’s* Democracy Index, the United States is a “flawed democracy.”⁸ The position in Greece, the home of democracy, is even more marked with the *dissatisfaction* level at 78%.⁹

I do not know whether the respondents to the surveys on which these statistics are based are part of the voting constituency in any of the countries (except Australia which has enforced compulsory voting). We do know, however, that with a population of 345,426,571, and not having compulsory voting, the 2020 US Presidential election saw the largest voter turnout for any national election since 1900, but still with only around two-thirds (66%) of the eligible population having cast a vote.¹⁰ That was an increase of 17 million votes from 2016.¹¹

6 This level of education was found to be a relevant factor in 8 countries surveyed: Argentina, Chile, France, Germany, the Netherlands, Poland, Spain and the USA. However, in other countries, the level of education was not found to be an influencing factor. See: <https://www.pewresearch.org/short-reads/2024/06/18/satisfaction-with-democracy-has-declined-in-recent-years-in-high-income-nations/>

7 <https://www.pewresearch.org/global/2024/03/13/what-can-improve-democracy/>

8 <https://worldpopulationreview.com/country-rankings/democracy-index-by-country>

9 <https://www.pewresearch.org/short-reads/2024/06/18/satisfaction-with-democracy-has-declined-in-recent-years-in-high-income-nations/>

10 <https://www.pewresearch.org/politics/2023/07/12/voter-turnout-2018-2022/>

11 137.5 million votes cast in 2016 to 154.6 million cast in 2020 (<https://www.census.gov/newsroom/press-releases/2022/2020-presidential-election-voting-report.html>). The context of the time was certainly unique, it being in the midst of a global pandemic, but the combination of an aging population and the insurgence

Last week's election saw nearly 5 million fewer votes cast than in 2020, coming in at 149.9 million.¹²

Australia is one of only 23 countries in the world that has compulsory voting.¹³ Australia is marking the centenary of its introduction this year¹⁴ which was a reaction to low voter turnout over a number of election cycles, where, at the Commonwealth level, it had been as low as 58%.¹⁵ Critics at the time argued that compulsion was “wrong in principle” and that “it ‘is not the democratic norm’.”¹⁶ Arguments in favour included “compulsion would enforce political education.” In the first state and Commonwealth elections that took place after compulsory voting was implemented, turnout increased by an average of 23.2%¹⁷ and has never dropped below 90%.¹⁸ In the United States in 2015, President Obama raised the question of compulsory voting, and the *Harvard Law Review* published a Note on the topic which said, “[t]his nascent debate marks an exciting effort to make the

actual electorate more representative of the eligible electorate and potentially shift political power.”¹⁹

When I first started thinking about my remarks for this morning, the election in the US was ahead of us. The pall of disappointment, if not disbelief, that hung over the Democrats on the evening of 5 November was palpable for all to see on our television screens. And, as might be expected, the commentators, including in Australia, have had an “I told you so” field day ever since.

Indeed, last weekend reading a variety of articles would make one think that's how we should all have been thinking, all along. Let me provide you with a few quotes:

- “As millions struggled with life and death cost of living pressures, Harris was babbling word salads about joy”.²⁰
- One Democrat Senator observed that “Harris and Biden made the case to voters that the administration's agenda had benefited Americans and should be extended for another four years,” “But [the popu-

of the youth vote had a big impact on the numbers (<https://www.pewresearch.org/politics/2021/06/30/behind-bidens-2020-victory/>).

12 As at 13 November 2024: <https://www.nytimes.com/interactive/2024/11/05/us/elections/results-president.html>

13 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/em/electo4/appendixg

14 See the *Commonwealth Electoral Act 1924* (Cth), “It shall be the duty of every elector to record his vote at each election.”

15 M Mackerras and I McAllister, ‘Compulsory voting, party stability and electoral advantage in Australia’ (1999) 18 *Electoral Studies* 217, 220.

16 *ibid*, 222.

17 *ibid*, 220. Literature on the impact in other countries seems to suggest an increase of between 3.5–10%. See: M Hoffman, G Leon and M Lombardi, ‘Compulsory voting, turnout, and government spending: Evidence from Austria’ (2017) 145 *Journal of Public Economics* 103 and S Gaebler, N Potrafke and F Roesel, ‘Compulsory Voting and political participation: Empirical evidence from Austria’ (2020) 81 *Regional Science and Urban Economics* 103499.

18 https://www.aec.gov.au/about_aec/publications/voting/

19 ‘Compulsory Voting’s American History’, (2024) 137 *Harv. L. Rev.* 1138: <https://harvardlawreview.org/print/vol-137/compulsory-votings-american-history/>

20 Joe Hildebrand, *Saturday Telegraph*, 9 November 2024.

lace] didn't feel it — and 'the American public' didn't give us credit for it."²¹

- As to the strong Trump vote amongst Latino men, another commentator observed that "this time around it appears that the economy was the key to Trump's success," citing amongst other things that Latino men are working class and, overall, not educated.²²

Henry Ergas, writing his weekly opinion piece in *The Australian* summed up the position in these terms: "... the Americans who voted for Trump didn't think they were electing a saint. They thought in a system, replete with constitutional safeguards, that they were electing a President who could make their lives at least a little bit better, a little bit easier."

Which brings me back to the Pew Research Centre's survey: 2 of the 3 factors they mentioned — living standards and education — were key factors in determining satisfaction levels with democracy. The consensus seems to be that it is the same with voter choice. Indeed, President Bill Clinton's political strategist James Carville, in the election against George H W Bush, put it quite pointedly: "It's the economy, stupid."

So, with those reflections, do I maintain what I consider an important and principled view of democracy and in particular compulsory voting? Absolutely. In my own view, to not vote is to disenfranchise yourself. Would compulsory voting have changed the outcome of the US election? We can, of course, only speculate. But of one thing we can be certain, the next 4 years will be interesting, and not only in the US.

I only add this: one thing that cannot be left out of the equation in discussions such as we are having today is that politics is the tin tacks of democracy. Democracy is at naught if the politics aren't right.

Today's Forum will give us a lot to think about. I offer the warmest of thanks, as always, to the Royal Society and the Learned Academies for continuing this important tradition of facilitating informed and enlightening discourse, and the opportunities for enrichment it promotes. I also give special thanks to all the contributors to today's sessions. Your insights, considerations, and generosity in sharing your knowledge and time is invaluable.

It is my privilege that I now open the 2024 Royal Society of NSW and Learned Academies Forum, "Threats to Democracy."

Thank you.

Susan Pond, President, Royal Society of NSW

I am Susan Pond and I've got a small role today to play as President of the Royal Society of New South Wales. I thank Her Excellency for her opening remarks that do set the stage for what she calls, and is truly, an important discussion about the

wide range of forces that are challenging democracies around the world, including here in Australia. I add my welcome to Her Excellency's and thank her most sincerely for hosting yet again the annual Forum which has been held here since 2015.

²¹ Michael D. Shear and Zolan Kanno-Youngs, *New York Times* in the *Sydney Morning Herald*, 8 November 2024.

²² Matthew Knott, *Sydney Morning Herald*, 8 November 2024.

The Royal Society of New South Wales upholds the principles of liberal democracy. We pride ourselves on being a trusted institution that provides credible information and on being part of a society that is connected and respectful, with a common purpose and shared identity. Today's Forum and today's topic, "Threats to Democracy," are fine exemplars of how the Society lives up to these ideals.

My main role this morning is to welcome and thank all of our speakers for participating in the programme, and to thank everyone for joining the audience today, either here in Government House in person or online from across Australia and beyond. Our speakers, and you the audience, represent a very wide spectrum of interests and expertise. You span academia, industry, government, public administration, culture and civil society. You include, but are not limited to, Members and Fellows of the Society itself, Fellows of the five learned academies — Health and Medical Sciences, Humanities, Social Sciences, Science, Technology and Engineering — Fellows of the Royal Society of Arts in London, early career researchers from universities across New South Wales, leaders in civil society, government, and businesses small, medium and large. I especially acknowledge the representatives here today from the office of the New South Wales Chief Scientist and Engineer, and thank Hugh Durrant-Whyte, our New South Wales Chief Scientist and Engineer, and the New South Wales Gov-

ernment for their continued engagement with the Society and their much appreciated sponsorship of this Forum.

The Royal Society of New South Wales is purposely cross-disciplinary and welcoming to members from all walks of life. We are only going to be able to examine complex topics like threats to democracy by combining all of the perspectives from the sciences and humanities in order to make progress.

I now turn to thanking on behalf of the Society the chair of this year's Forum planning committee — Christina Slade — and committee members Elizabeth Dean, Vince di Pietro, Peter Shergold, Robert Marks, Graham Town and Lindsay Botten. Today would not have been possible without them. Today of course is only one day, but the Society will be preserving the proceedings for years to come in written form in the Society's *Journal & Proceedings* and in the video recordings on the Society's YouTube channel.

I invite Emeritus Professor Christina Slade to the stage. Christina is a Council member of the Society and chair of this year's Forum planning committee. Christina is an international academic leader in the areas of the impact of globalism on citizenship, media, and education. She has served as a senior academic and administrator in Australia, Europe, the US, and Mexico. Christina, welcome to the lectern to begin our collective consideration of threats to democracy.

Christina Slade, Chair, Forum & Program Committees

Thank you very much, Susan. I too want to acknowledge the Traditional Owners of this land, past, present, and future, and I want to make a special thanks to the current

occupants of this House and in particular the Governor and the household for their huge support. It's been a long process.

When I mooted the idea of “Threats to Democracy” as the topic of this year’s Forum, it was March or April, and we knew that there were going to be a lot of issues coming up, and we knew the American election would be decided just before we had the Forum. It has proved a rather more turbulent year than we expected. I think we’re particularly lucky to have Philip Pettit joining us from close to the epicentre — he’s at Princeton in the United States — to deliver the keynote address on the big question we’re all facing. His title is “Democracy — the What, the Why, and the How.” Philip is a highly distinguished philosopher with an extraordinary range. He jointly holds positions as Distinguished Professor of Philosophy at ANU and as the Laurence Rockefeller University Professor of Human Values at Princeton. He has fellowships in Australia, France, the UK, the US, and Ireland. He comes from the analytic tradition. I first knew him when he came to ANU in the 1980s, where he proved this extraordinary ability to collaborate. He led and worked with a cross-disciplinary team of economists and social theorists — very well-known names: Geoff Brennan, John Braithwaite, Frank Jackson, Michael Smith — in an extraordinarily powerful period for ANU’s philosophy.

He explained then that, having studied philosophy in Ireland, he had read widely

across French and European philosophy. He takes French and European philosophy seriously. Perhaps that’s not always true of analytic philosophers.

For Philip, issues in political philosophy and ethics in decision theory are tied to a genuine search for how we as a society live the best life possible. His book, *Republicanism: A Theory of Freedom and Government* from 1997, is not addressed to the issue of the Republic which might be relevant here. It’s a discussion centring on what freedom means for a citizen. He explains that while classical republicans depicted freedom as a negative quality — freedom from interference — he equates freedom with a positive — freedom from arbitrary domination — and he goes on to argue that freedom as non-domination is embedded in a vision of human agents as fundamentally social, communicative beings.

Aristotle taught Alexander the Great, but few modern analytic philosophers have direct influence on politicians or leaders. That is not true of Philip. His republicanism provided the underlying justification for political reforms in Spain under José Luis Rodríguez Zapatero, and he wrote with José Luis Martí *A Political Philosophy in Public Life: Civic Republicanism in Zapatero’s Spain*.

We are all in uncharted times right now for democracy. I am very, very honoured to welcome Philip Pettit.

Keynote

Democracy: the What, the Why and the How²³

Philip Pettit

Distinguished Professor, ANU; LS Rockefeller University Professor of Human Values, Princeton University

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Thank you very much indeed, Christina. It's a real pleasure and a great honour to be invited by you all. My great thanks to Your Excellency, Madame President, and ladies and gentlemen. I'm going to talk around the general themes. I hope it may be of some use as a background to the more detailed and I suspect incisive discussions that you're going to have later in the day. Unfortunately, as you can see, I'm in night-time America at the moment. You can see in the windows behind me that night has fallen, maybe in more senses than one. In any case I want to talk about these three themes: the What of democracy, the Why of democracy, and the How of democracy. So let's begin with the what of democracy.

The What of democracy: not by election alone

The characterisation of democracy that is almost standard in political science textbooks is "a system in which rulers are selected by competitive elections." That's a quote from Adam Przeworski, a well-known political scientist from NYU, more or less on

the left of the political spectrum.²⁴ It echoes what is really orthodoxy in political science, and that orthodoxy at least goes back to Joseph Schumpeter, writing in the 1940s. So the idea is that you equate democracy simply with electoral control over those who are in government.²⁵

One initial comment about that is that it's really quite a recent development. For example, if you look at the authors of *The Federalist Papers*, written in support of the US Constitution in 1787, they certainly defend what they would describe as a representative system — and basically an electoral representative system — but they do not call it democracy. In fact they distinguish it from democracy. Similarly, to pick another source, in 1819 in a rather famous piece on government, James Mill, father of John Stuart Mill, talks about the representative or electoral system as the grand invention of modern times, but he distinguishes it from democracy.²⁶

So I think it's worth noting that the equation between competitive election and democracy is really of fairly recent origin. It

²³ This is an edited transcript of Professor Pettit's keynote address. See the video at <https://www.youtube.com/watch?v=UwfiZw-58Ng&t=888s>

²⁴ Przeworski A (2019) *Crises of Democracy*. C.U.P.

²⁵ Schumpeter J (1942) *Capitalism, Socialism and Democracy*. NY: Harper Bros.

²⁶ Mill J (1820) Government, from *The Encyclopedia Britannica*. <http://studymore.org.uk/xmilgov.htm>

only became standard in the mid-19th century after the 1830s and 1840s. I think it's an unfortunate equation, actually, suggesting that the be-all and end-all of democracy is competitive elections. Just to explain why I believe that, let me describe two takes on this equation. One is the construction that is standard among political scientists — for example, very well known in the work of William Riker — which basically says democracy is about electoral control, majoritarian control, of who's in government. Those attached to this approach admit that that could create all sorts of problems, in particular the tyranny of the majority. So it's always said that, apart from the element of electoral control of government, we need anti-majoritarian constraints that will put a brake, so to speak, on what majoritarian rule might lead to. Now that's really very unfortunate because it equates democracy with electoral control, but then says democracy is actually not all that worthwhile.²⁷

Of course, that immediately invites the comment: "Well, who's at the source of these anti-majoritarian constraints?" The traditional line has been, "Well, that's the work of elites." Now you get a competition between the people ruling in the majoritarian election and the elite ruling in imposing these anti-majoritarian constraints. That's a very unfortunate mix and I suspect it may actually be at the source of the sort of discontent you find in populist circles with the way our democratic systems are working; the line is that there are too many of these anti-majoritarian constraints, so let's go with real democracy, that is to say, majoritarian control. That's a very unfortunate

consequence of the equation of electoral control with democracy.

But the other equally unfortunate construal of that equation is that which is commonly defended by such populists, which goes back to a theme from Jean-Jacques Rousseau. Populists tend to vulgarise Rousseau, however, drawing on him in support of the claim that electoral control by the majority is terrific because it imposes the will of the people on government. Competitive election on this approach is sacralised, or romanticised, as the way in which the people speak: the way in which the will of the people is expressed.

The notion that there is a will that the people as a whole — the collective people — might form and impose on government appears with Rousseau in the 1760s in the idea of the general will. Rousseau took the idea of a general will from a 17th-century theological tradition of thinking that God rules the world by a Divine will and that individuals are allowed to do things according to their particular wills under the general constraint of God's will for the universe. Rousseau secularised that idea, arguing that the people might rule by a general will, imposing it on government. But he did not think that the majoritarian election of government would secure the presence of the general will, holding that it would be very difficult to ensure its presence. He thought it would require at least a participatory democracy on the model that he found in his native Geneva.

This romanticisation of electoral competitive control of government is just as unfortunate as the other approach I've mentioned, which would limit electoral

27 Riker WH (1987) *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice*. Waveland Press.

control by anti-majoritarian checks. For one thing, it's metaphysically obscure. It's very unclear what the will of the people is, for if you have different districting rules or different electoral rules, it turns out that a different will is expressed in the voting. Given that there is no such thing as the will of the people independently of the particular voting system you use to express that will, the idea looks like a chimera, really — an illusion.

Apart from that unfortunate aspect of romanticising majoritarian competitive control of government, there's the fact that it simply licenses the tyranny of the majority. We know that the people in any democracy like ours in Australia — or in any advanced democracy today — are going to be of various backgrounds, interests, opinions, religions and ethnicities. They are extremely unlikely to have a single will that they might be happy to rally behind. If you allow majority will to rule in that way, you're going to deprive many individuals of their status as members of the people.

How should we think about democracy if we are unhappy with the simple equation between democracy and competitive electoral control? In order to address the issue of how democracy might be conceptualised if it's not just about competitive electoral control, I think, as indeed Her Excellency mentioned, that we should go back to the Greeks, who after all were the ones who used the word *dēmokratia* that we translate as democracy. What's very striking — and I'm really not a producer in this area, more a consumer of the scholarship — is that the scholarship makes quite clear that what the Greeks meant by *dēmokratia* was a system of any kind in which ordinary people had a good deal of power — in particular, had a

good deal of push-back power against those in government.

Thus, on the Greek approach, Athens was an exemplar of democracy, although, interestingly, in Athens almost no officials were elected; it was a system in which most authorities were appointed by lot — by a chance mechanism. The population was divided into ten tribes and then most bodies in government were filled by a statistical sample from each of those tribes. The Greek notion of democracy was focused not on any method, electoral or otherwise, whereby the people might control government, but just on the requirement that they have considerable power, no matter by what means, over their governing authorities.

Her Excellency, the Governor, mentioned the Economist Intelligence Index of democracy. It's very striking that it and other indices of democracy go away from the political science orthodoxy. For example, *The Economist* has 60 indicators of democracy. I'm all for this because that approach — thinking of democracy as having many different aspects or facets — presupposes that, as the Greeks would have it, the point or the goal of democracy is simply to ensure that ordinary people have a good deal of control over how they are governed, no matter by what means that control is achieved.

The Why of democracy: back to the Greeks (and Romans)

This answer to the question of what democracy is directs to an answer to the why question too. Assume that democracy is a system in which ordinary people are required to have a good deal of power over governing authorities. If democracy is attractive, then, that must be because it

enables people to exercise their power effectively. It ensures that the authorities will be unable to frame or impose the law, interpret or apply it, just as they wish, regardless of the judgments and values of the people; it puts popularly sourced constraints in place on how the authorities can use their power.

I can't resist introducing some history at this point, focusing on that fact that ancient Rome is a good example (in fact Athens itself was too) of a system where ordinary people had a great deal of control over how they were governed. The Romans didn't use the word democracy or *dēmokratia*, though they would have understood it — they described their system as a *res publica*, which essentially meant a conception of the system of government as a public affair. That's what *res publica* means, and of course gives us the word "republic." The Romans thought of the Republic as precisely a system in which ordinary people had a great deal of control and power: a capacity for push-back against those who ruled over them.

It's worth thinking about just the bare elements of the Roman Republican system, which was there for hundreds of years, down to the beginning of the Empire. Election did play a role in that system, unlike in Athens, because those who occupied official roles or bodies had to be elected to those bodies, indeed had to be elected by ordinary people. Maybe I should say "ordinary citizens," because of course in Rome at that time, as in Athens and almost everywhere else until very recent times, the citizenry were not inclusive of everybody; in particular, they were not inclusive of women. Still, in Rome those ordinary citizens had a great deal of power, and one aspect of that power was that the authorities had to be elected by the ordinary people.

But there were also many other aspects to the way in which ordinary people had control over how they were governed in Rome. A second was that while only those in authoritative positions could propose a law or a major initiative, no law could be enacted, unless it was ratified by one or another popular assembly, and there were many of these in Rome at the time.

A third way in which ordinary people could control government in Rome was that the courts were basically selected from among certain classes of ordinary people, case by case. The courts were very different from our courts, of course, because the members voted on both guilt and sentence: they weren't just a jury, they were judge and jury, as you might say. The important point for us, however, is that they were not controlled in applying the law by the elites, so that the courts represented a form of power on the part of ordinary people which was quite independent of the electoral control they had in selecting the authorities or indeed even in ratifying the laws.

But in other ways too, the ordinary people enjoyed considerable control over governing authorities. So, for example, if you as an ordinary person objected to how a particular official ruled in your case, you could appeal to special, elected officials, the tribunes of the plebs, and make your case to them; the tribunes were like powerful ombudsmen and if they took up your case, could even block any action against you. But apart from that, people in Rome had the right not just to appeal to a tribune but to appeal against an authority to a popular assembly: "Look how they've treated me," you might say. It was called a right of *provocatio*, from which we get provocation. Again, that was a means of control that ordinary

people had over how they were governed, how they were treated by those in government.

Nor is that all. Those of you who have visited Rome may remember that the Forum of ancient Rome is just in front of the Senate building; the Senate was a body of the elite officials or ex-officials who decided on policy, although not on law. People would assemble before the Senate and often protest against various measures that were being proposed or decisions that had been made. And that was yet another form of control — contestatory control — that the people had over the authorities in government.

Finally, ordinary people had a certain indirect power over officials of a kind that I think we still enjoy a vestige of, or a descendant of, today. This is that at every level of officialdom, at every level of authority, there were a number of competing officials. Thus, there were always two consuls at the top level, while at one of the bottom levels in the later Republic there were 40 quaestors. Such officials had to align with one another in order to agree on any policy. Since they often found it hard to align, they were seriously checked by this measure and were thereby made more controllable by ordinary people.

So much for the ways in which in Rome, the people had a great deal of democratic control in the Greek sense over how they were governed. I'd like to describe their system as *polycentric* in character. As there were many different centres of power in Rome, many different authorities, each with their own area domain of expertise and power, so there were many different channels of control over how those authorities did their business. Rome was a polycentric system in the sense that there were many

centres of power, and many channels of popular control. It really contrasts with the electoral image of democracy, which is monocentric: the power of the people is limited to their electoral power. Rome represents a polycentric model in which election plays a role but only alongside a variety of other measures.

The How of democracy I: updating the polycentric model

Moving on to the *how* of democracy, I now want to suggest that we should think of our democracy, and that of many advanced democracies today, as a polycentric system. This means a democracy with multiple centres of power within the government, and with various channels of control over those powers. What democracy involves, on this view, is an amalgamation of these control channels, through which we, as ordinary citizens, can push back against those in government. We have the power to ensure that those who rule us — who establish the laws, enact the laws, and apply the laws — do not do so at their own discretion. They are not our masters, for ideally it is we who set the terms under which they govern us.

I think this polycentric perspective is essential if we are to address the various threats that democracy faces today. There is no doubt that the electoral channel of control is under threat — though I would argue that this is more acute in the United States than in Australia. But the threats to democracy arise at many different points in the polycentric model of democracy that I'm proposing. I believe that many of the institutions in a polycentric democracy have Roman origins. But I will set aside a further discussion of Rome.

The role of government

Before we proceed, let's think about government. I've been discussing how ordinary people in a polycentric system can gain control over those who govern them. But we need to be clear about who exactly is included in the category of "those who govern."

What does government actually encompass? We often use the term to refer simply to the executive in our system — the administration, as it is called in the United States — or, especially in parliamentary systems like ours, to the executive as the controlling faction or party in the legislature. This is a perfectly reasonable use of the term, but I would like to invite you to consider that government involves far more than just the legislature that enacts laws, or by the administration that enforces them.

The legislature and executive enjoy domain-general power, since the laws they enact and enforce apply across many areas of social life, and they are rightly placed at the centre of democracy. But a democracy like ours also includes many other official individuals and bodies, which, for lack of a better term, I will refer to as domain-specific authorities. For example, the courts — the judiciary — represent a domain-specific authority. Unlike the legislature or the executive, the judiciary's power is not general but restricted to applying and interpreting the law in individual cases. This requires both impartiality and expertise in interpreting the requirements of law within the framework of overarching constitutional principles.

There are many other domain-specific authorities in any democracy, however, and certainly in a democracy like ours. The Electoral Commission, for instance, has a very specific role in determining the rules and conduct of elections, under the eventual control of Parliament, but functioning as a relatively independent body. This is why I regard it as an authority in its own right. Similarly, the Central Bank operates with domain-specific authority, requiring impartiality and expertise. The Bureau of Statistics, which provides vital economic data, is another example.²⁸ These authorities are all part of the broader government system that shapes the lives of ordinary citizens. It is crucial that the system of control over these powers is polycentric — addressing different points of power and offering diverse channels of control over the exercise of that power.

The Constitution as the framework for control

How should we think about the overall picture of a polycentric democracy? The first thing I would emphasise — and I won't dwell on this — is that if the people are to have control over how they are governed, they must have control over the Constitution. The Constitution serves as the framework for governance — the settlement, if you like — and it includes not only the written Constitution but also all the conventions and traditions that surround it. People must have some degree of control over the Constitution if the governance system is to be responsive to them.

In Australia, people have control over the Constitution through referenda, although

²⁸ There are many many examples, of course, such as the promised Commonwealth Centre for Disease Control. [Ed.]

these referenda are at the government's discretion. I would prefer to see citizen-initiated referenda, subject to strict campaign finance laws. Nonetheless, there must always be the possibility of public control over the Constitution. It should be difficult to change the Constitution, but not so difficult that popular discontent cannot spark the kind of debate that leads to a referendum. If the Constitution stands as it is, it should reflect the fact that the people freely acquiesce in it — that there is no widespread discontent sufficient to call for a referendum.

Control over the Constitution is essential because it often imposes constraints on government — constraints such as the rule of law. These constraints can be seen as originating from the people. They are not anti-majoritarian impositions by an elite but are grounded in the Constitution, which is ultimately the people's Constitution. This is one of the key reasons why control of the Constitution is so important.

The Constitution also licenses ordinary citizens to take initiatives in determining how government conducts itself. I think it's here that we see many of the centres and the channels of power that are so important to our enjoying democratic control over how we are governed.

The How of democracy II: polycentric control devices

I think of the various kinds of control licensed under the Constitution in a polycentric democracy like ours as falling into three broad categories. This may sound somewhat academic, but it provides a helpful mnemonic for understanding the range of mechanisms by which we, as ordinary citizens, exercise democratic control. These controls may not be surprising in themselves,

but grouping them this way helps us appreciate just how many channels of influence we do, in fact, possess. I'm going to refer to these control mechanisms — or devices — as Disciplinary devices, Contestatory devices, and Selectional devices.

It's important to recognise all three as avenues through which ordinary people can monitor and constrain government power. Ideally, these controls ensure that when those in authority govern us, they do so on terms that we have imposed — or at least endorsed. Let me briefly outline these three categories. I'll only cite familiar examples, but I hope doing so will help stimulate our imaginations about how these devices might be expanded, consolidated, or strengthened.

Standard Disciplinary devices

The first type of control we enjoy is disciplinary in nature. Let me begin with some examples.

A classic disciplinary device is *the system of checks and balances* that we, the people, embed in the structure of government. Take bicameralism, for instance: the requirement that both houses of Parliament must agree on legislation before it can pass. This constrains those in power because it forces different perspectives to be reconciled. The people, through their Constitution, impose this structure. It echoes the Roman system in which one consul could veto another — a model of mutual constraint. Rome is often described as a system of checks and balances, and we carry that legacy forward.

Another check derives from *the independence of the judiciary*, which plays a vital disciplinary role. Those in power can only introduce laws that withstand judicial scrutiny — judges (impartial and expert, we hope) must determine whether those laws

are consistent with the Constitution and existing legal frameworks. This is a powerful constraint, rooted in the rule of law, and one that originates in the people.

Other checks in the system of checks and balances are linked with relatively independent domain-specific authorities such as the Central Bank, the Electoral Commission, or the Bureau of Statistics. These bodies, like the judiciary, constrain domain-general authorities such as the executive or legislature by limiting their discretion. At the same time, these bodies can be checked by one another. This intricate web of institutional counterbalances helps secure democratic governance.

A second disciplinary device in addition to the system of checks and balances is found in the *rule of law* itself. This principle requires that laws be public, intelligible, and reasonably clear, so that citizens can actually comply with them. Laws must not be excessively burdensome, must avoid retrospective application, and should apply broadly and consistently across government institutions. These standards place substantial constraints on government power.

A third disciplinary device is *the requirement for reason-giving*. The executive must justify its decisions; legislatures must respond to interrogation in the chamber; judges must provide written opinions explaining their rulings. This public expectation — that those in authority account for their actions — is another powerful constraint sourced from the people.

Then there are *individual rights* entrenched in the Constitution. These establish clear boundaries that government must not cross,

particularly when it comes to how domain-general authorities exercise power.

Finally — and I think this is especially important — is the disciplinary role of a *professional public service*. A capable, well-informed public service brings institutional memory, policy continuity, and independent advice grounded in good governance. This is in sharp contrast to political staffers, whose focus is often on what good politics requires, not necessarily what good government demands. The weakening of the public service's role is deeply troubling.²⁹ A strong, expert bureaucracy is a vital constraint on arbitrary power.

Standard Contestatory devices

The second category of control consists of Contestatory rather than Disciplinary devices. These rely on core freedoms: freedom of speech, freedom of the press, freedom of association, and freedom of information. Such freedoms must be firmly secured — “copper-fastened,” so to speak — if contestatory mechanisms are to function properly in a democracy.

One form of contestatory control is *direct public protest*. Citizens or media actors who challenge government decisions — through demonstrations, legal actions, or journalistic exposés — are exercising contestatory power. These challenges are crucial to democratic oversight.

But contestation doesn't always take such active forms. There is also standby contestation — the implicit constraint created by the *possibility* of public backlash. Governments often refrain from certain actions not because they are prohibited outright, but because they anticipate strong public

²⁹ As perhaps seen in the Robodebt debacle (2016–2020.) [Ed.]

resistance. This latent capacity for protest is itself a meaningful form of control.

Beyond these direct forms, there are *arm's-length mechanisms* of contestation. Civil society groups — such as NGOs with popular legitimacy — can protest and monitor government on our behalf. In the Roman Republican tradition, every citizen was expected to be vigilant in overseeing government. Today, we distribute that responsibility across civil society. Different NGOs perform the role of public invigilators, offering a form of indirect contestation.

We also rely on *independent bodies* established by government, such as inspectorates or commissions of inquiry, which can investigate and speak in the people's name. Although created by the state, these bodies operate with relative independence and can serve as institutional platforms for public contestation.

Standard Selectional devices

The third and final category of control mechanisms is what I refer to as Selectional devices. These concern the ways in which ordinary citizens participate in choosing who holds office and who exercises power on our behalf. In a functioning democracy, this category is absolutely central.

The most obvious selectional device is *the electoral system* itself. Through regular elections, we, the people, choose our representatives — those who sit in Parliament, form governments, and implement policy. This process of selecting, re-selecting, or de-selecting our leaders is fundamental. It gives ordinary people control over the *personnel* of government, even if not over every policy outcome. Of course, elections alone are not sufficient for democracy, but they are indispensable.

A related selectional mechanism is *the recall mechanism*, used in some systems, which allows voters to remove an elected representative before the end of their term. While Australia does not have this at the federal level, it's an example of how democratic systems can give people more direct say in who represents them, and for how long.

In addition to formal elections, selectional control can take the form of *public appointments processes*. For example, while we may not vote directly for judges, central bank governors, or heads of statutory agencies, democratic systems typically require these appointments to follow certain procedures — sometimes including parliamentary scrutiny or independent vetting — to ensure that those chosen reflect public standards of merit, impartiality, and integrity.

Where election is the salient selectional mechanism with domain-general authorities in the legislature and executive, it is inappropriate with officials in these domain-specific roles. Why? Because those in such roles have an incentive inherent in the tasks they are assigned to discharge them by standards assumed on all sides to be relevant. For example, judges are supposed to interpret the law based on the best understanding of that law. If we elected them, we would introduce an independent motive — the incentive to be re-elected — which might well distort their decisions. It's far better that such appointments be made under public procedures — but made transparently, of course, subject to contestation through appropriate review bodies, and based on relevant criteria of expertise and good-faith tests of impartiality.

Finally, to introduce a mechanism of popular control that has recently come

into prominence, there are *citizens' assemblies and deliberative forums*, which allow for the temporary selection of ordinary citizens to deliberate on public policy. These processes give citizens a direct role — not just in selecting representatives, but in shaping laws and policy outcomes. When properly structured, they can complement electoral selection and formal procedural appointment, deepening people's control over government.

What all these mechanisms have in common is that they empower citizens to shape the composition of government, either directly or indirectly. Through these devices, we have the capacity to *renew* the personnel of government, ensuring that those who govern do not become entrenched or unaccountable. Selectional controls are, in that sense, a safeguard against the degeneration of democracy into oligarchy or rule by an unresponsive elite.

Takeaway

Disciplinary, Contestatory, and Selectional devices form the polycentric framework of democratic control. They reflect the multiple centres of power in a complex modern democracy and the multiple avenues through which citizens can exert influence over those centres. The more robust each set of mechanisms is — and the more they are supported by constitutional structures, cultural norms, and civic habits — the healthier a democracy will be.

Thus, in a polycentric democracy like ours, the people should have control not only over the Constitution, but also — through disciplinary, contestatory, and selectional means — over the conduct of government. If there's a takeaway from all this, it's that any serious review of the threats to democracy must look at threats to each of these control points within a polycentric, networked model of democratic governance — the kind we're fortunate to enjoy in Australia.

Questions and Closing

Christina Slade: Thank you very much, Philip, for a wide-ranging and timely reconfiguration of how we think about our democracy. That was fascinating. I'm now going to open the floor to questions. Please keep them as questions — not long statements. But I'll start us off.

As Her Excellency the Governor mentioned, we've been flooded here in Australia with analysis of what happened in the US election. The piece I want to refer to appeared last weekend in the *Financial Times*, by Francis Fukuyama.³⁰ He argued two things: first, that classical liberalism had

been undermined both by neoliberalism and by identity politics — what he called “woke liberalism.” More importantly, he said — and many commentators have agreed — that in Trump's first term, the system constrained him: the bureaucracy and your so-called polycentric system worked. But Fukuyama warns that in a second term, those constraints may be undermined. We've already seen appointments that suggest this. My question: how can those constraints be reinforced in a possible second Trump presidency?

³⁰ Fukuyama F (2024) What Trump unleashed means for America. *Financial Times*, 8 November.

Philip Pettit: Thank you, Christie. I remember doing an interview in Europe just after the 2016 election, and I was quite confident then that the American system would constrain Trump — that he wouldn't, as many feared, run amok. I think that turned out to be largely right, as Fukuyama says.

But I'm far more concerned now. Many of the guardrails — the institutional bars that might keep him in check — seem less visible than before.

One particularly striking feature of the American system is the politicization of the judiciary. There are deep reasons for that, including the Constitutional requirement that Senate approval is needed for federal judicial appointments. That sounds like a check on the President — and in theory it is — but in practice, it means Presidents can appoint judges who just scrape over the required threshold, and who are on their side politically. This politicization is a real weakening of the system.

That said, I do hope that judges — even those politically appointed — are still influenced by their interest in maintaining their reputation. That “economy of esteem,” as I call it, may help keep the judiciary honest, even when partisanship intrudes.

But the most worrying development in the last election was Trump — and indeed J.D. Vance — refusing to commit to accepting the result if it went against them. That's absolutely terrifying. I hope, if the Democrats win in later years, that any challenge to the results would be so shameless that it wouldn't gain traction. But the fact that such a scenario is even plausible is deeply concerning.

Another risk lies in the Justice Department. Traditionally, it has had some independence from the executive, but that's

based more on convention than constitutional requirement. With the new Attorney General, it's not at all clear that this independence will be honoured. If it's lost, it could create a kind of internal rot — a slow unravelling of the polycentric democracy that the U.S. has long represented.

Question: I'd like to build on the previous question, because I think it's important to examine the motivations behind the erosion of different centres of power. We've seen this trend globally — Hungary under Orbán being a standout example of so-called illiberal democracy.

It seems that in recent years, we're seeing a convergence of government with the interests of particular business elites. We saw it under Thaksin in Thailand, Berlusconi in Italy, and now Orbán in Hungary. I'd be interested to hear your thoughts on whether this convergence between business and government represents a new kind of threat to democracy.

PP: Let me comment first on the Hungary case, which illustrates what we've seen in many countries where democracy has drifted toward autocracy. The typical strategy taken by elected but increasingly autocratic governments — “autocratic democrats,” so to say — is to systematically silence institutional checks and balances. This includes disempowering domain-general bodies like parliaments and domain-specific ones like courts or regulatory agencies. In Hungary, Russia, Türkiye, and to an extent India, the pattern is clear: weaken or control the judiciary, and simultaneously marginalise or discredit non-governmental organisations.

NGOs are often labelled as “foreign agents,” as we've seen in all those examples. It's a way of suppressing a vital part of

polycentric democracy — shifting toward a monocentric, top-down form of governance.

As for the connection with business — I think you're right to highlight it, and it's an important observation. I don't have a fully worked-out theory, but I would say this: when a government consolidates monocentric power, it gains the ability to favour certain corporations. In return, those corporations provide support — political, financial, or even ideological. So yes, autocratic or semi-autocratic governments can enter into mutually beneficial arrangements with selected business interests.

But it's never all business. It's always a subset — those firms that are seen as politically useful or aligned with the regime's priorities. So it's not a general pro-business stance. It's cronyism. And it's dangerous.

Ros Croucher: I'm the former president of the Australian Human Rights Commission, and in that role I advocated for the introduction of a statutory human rights framework in Australia. Our current system of rights protection relies heavily on tradition — and while those traditions are important, there remains a clear gap in formal legislative safeguards.³¹

Philip, I was heartened to hear you speak out against the risks of an elected judiciary. One challenge we've faced in advocating for statutory rights is a rather mischievous critique: the claim that it would put "too much power in the hands of unelected judges."

This criticism often distracts from the real conversation. After all, the statute would still be designed and passed by elected representatives. So I'd welcome your reflections

on that trope — that unelected judges are somehow a democratic threat.

PP: That's music to my ears, Ros — and I appreciate your advocacy on this front. This idea that unelected judges are inherently undemocratic stems from a narrow view of democracy — one that sees electoral competition as the sole source of democratic legitimacy and popular control. If we define democracy purely by reference to elections, then yes, it seems troubling that judges — key decision-makers — aren't chosen by popular vote.

But that's a serious misunderstanding of how democratic control operates in a polycentric system. As we've discussed, judges aren't supposed to be delegates of public opinion. They're appointed to perform a domain-specific function: to interpret and apply the law in line with constitutional principles and established conventions. And insofar as they do that — insofar as they act in good faith, with expertise and impartiality — they *are* acting under the people's control. They're doing what we collectively have authorised them to do.

Introducing elections into this process adds a second, and often competing, motive: the incentive to please voters in order to be re-elected. That can lead to distortion — judges tailoring decisions to popular sentiment or political ideology, rather than to legal principle. We've seen this in the U.S., where elected judges sometimes issue harsher criminal sentences as election dates approach. That's not accountability. That's vulnerability to political pressure.

You asked about the controls on judges — and they do exist. In Australia,

³¹ Ros Croucher 'Making rights a reality — the need for a Human Rights Act for Australia'. The 1313th OGM and Open Lecture of the RSNSW, 7 June 2023. <https://www.youtube.com/watch?v=dgB2zsneAfw>

judges aren't appointed for life as in the U.S., which already offers a measure of temporal limitation. But beyond that, I believe reputation plays a crucial role. Judges care deeply — as they should — about how they're viewed by their peers, by the broader legal community, and by the public. There's a culture of professionalism and integrity, and that's a powerful constraint.

So, to your broader point about statutory rights: I wouldn't be worried about judges interpreting those rights, provided that appointments are merit-based, transparent, and insulated from political manipulation. In the U.S., interpretation of rights — take the Second Amendment,³² for example — has often been driven by contemporary political agendas, which undermines both judicial independence and public confidence. Australia is in a far better position to design a framework that avoids that fate.

That said, if we are to introduce statutory rights, we should also think carefully about how to protect judicial impartiality. Otherwise, we risk building a framework that, over time, erodes the very protections we set out to establish.

John G., UNSW: My question parallels the previous one, and in many ways you've already answered it. But I'd still like to ask: to what extent can it really be said that citizens control judges in systems where the judiciary is elected? We know — especially from the United States — that elected judges often have one eye on their re-election, particularly in criminal sentencing. That introduces distortions. So, if election distorts judgment, how can we meaningfully

claim that the public “controls” judges in such systems?

PP: Thank you, John. That goes right to the heart of the issue. It's a mistake, I think, to equate democratic control purely with electoral control. As I've argued, we should understand democracy in a *polycentric* way — where power is exercised through different institutions, each subject to distinct but meaningful forms of constraint.

In the case of the judiciary, citizens exercise control not through the ballot box, but through the culture, expectations, and normative constraints that define the judicial role. These are part of what we might call the *informal constitution* of the country — a constitution that includes the conventions that shape the appointment process, the norms judges internalise, and the standards to which they hold one another.

This is what I've elsewhere called an *economy of esteem*. Judges care deeply about their standing — among peers, within the legal community, and in the eyes of the public. That reputational economy exerts real pressure. It helps ensure that judges behave in accordance with the values and expectations that we, as a public, have broadly endorsed.

And crucially, judges in systems like Australia are not politicised in the way U.S. federal judges often are. They're appointed, not elected, and they're not granted life tenure. That, too, creates space for accountability without politicisation.

You're absolutely right that elected judges often distort their rulings under political pressure — especially in high-salience areas like criminal justice. That's a serious danger. In those cases, the motive to seek public favour can overpower the imperative

³² “The Right to Keep and Bear Arms.” [Ed.]

to follow the law impartially. In my view, that's not a feature of democracy — it's a pathology of a poorly designed system.

What we need is a clearer articulation — and perhaps greater public awareness — of how appointed judges remain accountable. If we can *make visible* the checks and expectations that shape judicial behaviour, then we reaffirm public control in a deeper, more robust way than the crude mechanism of the vote ever could.

That's why I've argued that in a polycentric democracy, we should focus not just on expanding electoral channels of control, but on nurturing the *disciplinary* and *contestatory* channels — the invisible yet powerful ways

in which citizens shape institutional behaviour. The judiciary is a perfect case in point.

CS: Phillip, I think we had better finish there. Thank you so much. Since I first heard you speak, I've been in awe of your capacity for clarity and argument and this great commitment to reason. I think we've seen that again today. I also think that's been the basis of our thinking slightly more positively about how we can manage what has looked to us like a fairly difficult time for democracy. I think we have a real concern about what's going to happen to these structures, and so I'm very grateful to you for that, and look forward to the rest of the day.

